

# **PUBLIC HEALTH EMERGENCY BENCH BOOK**

**December 2006**

## **ACKNOWLEDGEMENTS AND ENDORSEMENTS**

This Bench Book was prepared under the leadership of Hon. Julie Spector of the King County Superior Court and Sally Bagshaw, Chief Civil Deputy, King County Prosecuting Attorney's Office. The Bench Book was drafted by a team from the Civil Division of the King County Prosecuting Attorney's Office: Amy Eiden, Jane Ann McKenzie, Janine Joly, and Steve Hobbs, with production assistance from Lisa Boggess and Megan Vogel.

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## **PUBLICATION AND UPDATE PROTOCOL**

This Bench Book is available online at  
<http://www.courts.wa.gov/emergency/?fa=emergency.publicHealthBenchBook>.

Updates will be prepared annually and posted to the online edition. Updates will be carried out by Hon. Julie Spector, King County Superior Court, in conjunction with Ann Sweeney, Washington State Administrative Office of the Courts; Sally Bagshaw, Civil Division, King County Prosecuting Attorney's Office, and David Reynolds, King County Superior Court.

## **PREFACE**

The Public Health Emergency Bench Book seeks to provide an educational tool for the Court to use should the community be confronted with a major health emergency. The outbreak of Severe Acute Respiratory Syndrome (SARS) in 2003, the emerging threat of pandemic influenza, and the risk of bioterrorism have heightened awareness of the need for public health legal preparedness, including preparing the courts for situations in which they may be called upon to enforce public health laws. In addition, it is hoped that the book will provide an impetus for the courts to examine their own processes to determine whether they are prepared to deal with operational issues that could arise due to the onset of a major health emergency.

The book discusses the authority of various public officials to prevent and respond to a public health emergency. State and local officials have overlapping authorities with regard to protecting public health and safety. The Governor and the heads of political subdivisions have authority to act during emergencies. The State Board of Health, the State Secretary of Health, the local boards of health, and the local health officers each have certain authority to protect public health. Some public health laws pertain to preventing a health emergency, such as by reporting and tracking communicable diseases. Other public health laws grant authority to health officials to control the spread of disease.

Control of a large communicable disease outbreak may require the implementation of "social distancing measures." Social distancing measures are intended to decrease contact among persons and thereby reduce the opportunities for spread of disease. Examples include closing schools and suspending large gatherings. Another example that could directly involve the courts is the imposition of isolation or quarantine. The book discusses the authority and procedures for implementing isolation and quarantine and the Court's central role in the process. In addition, the book provides sample pleadings for the use of the courts and counsel. The book also discusses other more familiar procedures, such as habeas corpus and statutory writs, that might be invoked by parties in various proceedings to challenge government action or inaction to prevent or respond to a public health emergency.

Finally, the book addresses the operation of the courts amid a public health threat. The Court could be faced with many challenges, including how to conduct proceedings when the party's presence in the courtroom presents a risk that the disease will spread, and how to continue the Court's operations if the Court's personnel, including judges and staff, become ill from a contagious disease.

The book is not intended to be an alarm. It is, however, intended to provoke thought, and to provide a resource for the Court and public agencies in preparing for the possibility of a major health emergency.

*December 2006*

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## **SUMMARY**

### **Jurisdiction, Venue, and Relevant Civil Actions ([Chapter 1.00](#))**

#### **The U.S. Constitution ([1.11](#))**

- Federal government's public health powers limited to those that fall within its jurisdiction (defense, interstate commerce, tax powers).
- Responsibility for safeguarding public health in other areas falls largely to the states.
- Federal government has responsibility for public health in some discrete geographic areas such as military bases.
- Pursuant to its itemized powers, federal government may exercise some public health functions such as those granted to the U.S. Department of Health and Human Services or those related to public health emergencies precipitated by acts of war or terrorism.

#### **States as Primary Actors ([1.12](#))**

- The state's public health authority comes from its police powers.
- The Washington Constitution established the State Board of Health with powers set forth by the legislature.
- The Washington Constitution gives local governments power to make and enforce police, sanitary and other regulations not in conflict with general laws.

#### **Jurisdiction Over Public Health Matters ([1.21](#))**

- Superior courts have original jurisdiction.
- The Court of Appeals and the Supreme Court have appellate jurisdiction.

#### **Venue for Public Health Matters ([1.22](#))**

- Proper venue is in the superior court of the county at issue or Thurston County Superior Court.
- Venue may be changed as provided in statute and court rule.

#### **Petitions for Writs of Habeas Corpus ([1.30.A](#))**

- Governed by chapter [7.36 RCW](#).
- May be granted by the Supreme Court, Court of Appeals, or Superior Court.
- Any person "restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus."
- Writ must be signed, verified and contain information set out in statute.
- Writ requires officer restraining individual to produce the individual without delay at the time and place directed by the judge.
- To prevail, habeas petitioner must show actual prejudice resulting from constitutional error.

#### **Personal Restraint Petitions ([1.30.B](#))**

- Governed by chapter [10.73 RCW](#) and RAP 16.3 to 16.15, 16.24 to 16.27.
- Court of Appeals and Supreme Court have concurrent jurisdiction. Cases filed in Superior Court should be transferred to the Court of Appeals for lack of Superior Court jurisdiction.
- Mandatory elements for petition set out in RAP 16.7.
- If responding party is the government, petitioner need not name a specific agency or individual.
- To prevail, petitioner must show either (1) actual or substantial prejudice arising from constitutional error, or (2) nonconstitutional error that inherently results in a "complete miscarriage of justice."

**Statutory Writs of Mandamus and Prohibition ([1.40](#))**

- Writ of mandamus compels the performance of an act.
- Writ of prohibition arrests the proceedings of any tribunal, corporation, board, or person.

**Applicability of King County Rules of Court to Public Health Cases ([1.50](#))**

- As a general rule, public health cases are conducted in same manner as other proceedings.

**Emergency and Emergency Management ([Chapter 2.00](#))****Emergency Defined ([2.20](#))**

- "Emergency" defined in [RCW 38.52.010](#)(6)(a).

**State Organization ([2.31](#))**

- State Military Department shall administer emergency management program of the state.
- Adjutant General is the Director of the Military Department and is responsible to Governor for carrying out program for emergency management.

**Authority of the Governor ([2.32](#))**

- Governor may find existence of emergency pursuant to [RCW 43.06.010](#)(12).
- Emergency powers only effective within area described in Governor's proclamation.
- Procedural requirements for proclamation set out in [RCW 43.06.210](#).
- Governor issues proclamation to terminate state of emergency and must do so when order has been restored in the area affected.
- After proclaiming state of emergency, Governor may issue orders as provided in [RCW 43.06.220](#).
- In the event of a disaster beyond local control, the Governor may assume control over all or any part of emergency functions of the state.
- Governor authorized to:
  - Make, amend, and rescind necessary orders, rules and regulations
  - Enter into mutual aid agreements
  - Coordinate mutual aid interlocal arrangements
  - Delegate administrative authority
  - Cooperate with federal officials and officers and agencies from other states
- Duty of every organization for emergency management to enforce Governor's orders.
- Criminal sanctions as provided in [chapter 43.06 RCW](#) apply during an emergency.
- In case of removal, resignation, death, or disability of the Governor, duties devolve upon the following, in order: Lieutenant Governor, Secretary of State, Treasurer, Auditor, Attorney General, Superintendent of Public Instruction, Commissioner of Public Lands.
- Case law involving actions by the Governor during an emergency:
  - Clear intent by the Legislature to delegate requisite police power to the Governor in times of emergency
  - Governor has discretion to determine both the start and end of an emergency

**Local Organization (2.41)**

- Each local organization for emergency management shall: (1) perform emergency management functions within its jurisdiction, and (2) conduct such functions outside as may be required.
- Emergency management director shall have direct responsibility for the local organization, subject to direction and control of the executive officer.

**Local Authority (2.42)**

- May exercise statutory emergency management powers in light of the exigencies of an extreme emergency situation without regard to procedures and formalities.
- Will have the power to enter into contracts and incur obligations necessary to combat disaster, protect health and safety of persons and property, and provide emergency assistance.
- Directed to use existing services, equipment, supplies, and facilities. Officers and personnel required to cooperate notwithstanding other provisions of law.
- Services and equipment may be commandeered by Governor, executive, and emergency management director after proclamation by Governor of emergency.

**King County Code Provisions (2.50)**

- The Office of Emergency Management is responsible for planning and providing effective direction, control and coordinated response to emergencies.
- Office of Emergency Management Duty Officer telephone number: 206-296-3830.
- Emergency defined in [K.C.C. 12.52.030](#) and [12.53.010A](#).
- Executive may proclaim an emergency as provided in [K.C.C. 12.52.030.A](#).
- Upon proclamation of emergency, Executive may make orders that include:
  - Recalling employees from vacation or retirement and authorizing overtime
  - Waiving certain procurement and contracting requirements
  - Imposing a curfew
  - Requiring businesses to close
  - Closing public places
  - Other such orders as are imminently necessary for the protection of life and property
- Executive orders must be filed with the clerk of the council and are in effect until terminated by the Executive or as provided in [K.C.C. 4.16.050](#) for orders waiving procurement requirements.
- Emergency purchasing authorized by [K.C.C. 4.16.050.A](#) for:
  - Lease or purchase of tangible personal property or services
  - Contracts for public works
  - Selection and award of professional or technical services consultant contracts
- Waivers must be filed with the clerk of the council and expire as provided in [K.C.C. 4.16.050](#).
- Reasonably necessary expenditures to respond to emergency will not result in contracts or purchases being null and void, notwithstanding the lack of an appropriation.
- Continuity of King County Government

- Vacancy in office of county executive filled by temporary interim successor.
- Council may conduct business during an emergency at a location other than the usual meeting place and may conduct business with a reduced number of councilmembers.
- Other elected officials are authorized and directed to designate temporary interim successors to the office in the event of a vacancy during an emergency.
- Criminal sanctions apply for failure or refusal to obey an executive order during an emergency.

#### **Seattle Municipal Code Provisions ([2.60](#))**

- Mayor may declare an emergency as provided in [SMC 10.02.010.A](#).
- Mayor's proclamation of emergency must be filed with the clerk of the council and may be modified or rejected by resolution of the city council.
- Proclamation of emergency must be delivered to the Governor and to all news media within the city.
- Emergency ceases to exist upon proclamation by Mayor or by resolution passed by not less than 2/3 of the city council.
- Upon proclamation of emergency, Mayor may make orders that include:
  - Imposing a curfew
  - Closing businesses
  - Closing public places
  - Directing the use of all public and private health, medical, and convalescent facilities and equipment to provide emergency health and medical care for injured persons
  - Other such orders as are imminently necessary for the protection of life and property
- Mayor's orders must be filed with the clerk of the council.
- Upon proclamation of emergency, Mayor may enter into contracts and incur obligations.
- Criminal sanctions apply for failure or refusal to obey a mayoral order during an emergency.

#### **Health Agencies and Boards ([Chapter 3.00](#))**

##### **Washington State Board of Health ([3.20](#))**

- Powers and Duties Related to Communicable Disease Control
  - Rulemaking
  - Enforcement of State Board of Health Rules

##### **Washington State Department of Health ([3.30](#))**

- Powers and Duties Related to Communicable Disease Control
  - Enforcement of laws and rules
  - Investigation of outbreaks of disease
  - Investigation of conditions that threaten public health

##### **Local Health Boards, Departments, and Officers ([3.40](#))**

- Structure
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    - Membership
    - Jurisdiction coextensive with county boundaries

- Local Health Departments
  - County or district
  - Combined city-county health department
- Local Health Officer
- Powers and Duties Related to Communicable Disease Control
  - Local Boards of Health
    - Rulemaking for the public health
    - Enforcement of state public health statutes and rules
    - Supervision of health and sanitary measures
    - Provide for control and prevention of contagious disease
  - Local Health Officers
    - Enforce state and local laws, including filing of civil actions
    - Maintain health and sanitation supervision
    - Control and prevent spread of contagious disease
    - Investigate diseases and institute control measures
    - Control disease at schools and day care centers, including shut down, in certain circumstances, and after appropriate notification
    - Report and track communicable diseases
    - Implement isolation and quarantine
  - Case law involving authority of local board of health and health officers
    - Law and actions are to be liberally construed
    - Local regulations may not conflict with state or federal law

#### **Violations and Penalties (3.50)**

- Misdemeanor for person to violate rule or order of local health officer or local or State Board of health.
- Public officers and employees can be fined for failing to enforce rules adopted by State Board of Health.
- Members of local boards of health can be fined for failing to enforce rules adopted by State Board of Health for the control of dangerous infectious disease.
- Local health officer who refuses or neglects to enforce the provisions of [chapters 70.05](#) or [70.24 RCW](#), or rules of State Board of Health can be removed.

#### **Health Districts (3.60)**

- Establishment
  - Is all the territory consisting of one or more counties.
  - If two or more counties, created by the county commissioners.
  - If one county, created by county legislative authority.
- District Boards of Health
  - At least five members for districts of two counties, and seven members for districts of more than two counties
  - County commissioners provide for membership on the boards
  - If health district is one county, county legislative authority specifies membership.

#### **Relationship Between State and Local Health Departments (3.70)**

- State Board of Health rules to be enforced by local boards of health and local health officers
- Secretary of Health can enforce state public health laws and regulations in local matters when an emergency exists or the local board of health has

failed to act with sufficient promptness, or no local board of health has been established.

- Secretary of Health can exercise authority of local health officer when needed due to an emergency, the local health officer has failed to act, or pursuant to agreement.

#### **King County Code Provisions ([3.80](#))**

- Seattle-King County Department of Public Health
  - Combined city-county health department, established pursuant to [chapters 70.05](#) and [70.08 RCW](#).
  - King County Code establishes duties of the Department.
  - Public Health Duty Officer telephone number: 206-296-4606.
- King County Board of Health
  - King County Code establishes the membership.

#### **Communicable Disease Tracking ([Chapter 4.00](#))**

##### **Communicable Disease Reporting and Investigation ([4.20](#))**

- Reportable Diseases
  - State regulations identify notifiable conditions and time in which they must be reported.
  - Diseases of suspected bioterrorism origin are to be reported immediately. Examples: Anthrax and smallpox.
  - Other rare diseases of public health significance are to be reported immediately.
  - Unexplained critical illness or death is to be reported immediately.
  - Local health officer can require notification of additional conditions of public health importance.
  - Outbreaks or suspected outbreaks are reportable, even if the disease is not identified as a notifiable condition.
- Persons and entities having a duty to report: health care providers; laboratories; health care facilities.
- Records and specimens containing or accompanied by patient identifying information are confidential. Local health officers and State Department of Health to maintain confidentiality. (Permissible disclosures discussed at [§ 4.32](#).)
- Other persons and entities with responsibilities related to reporting: veterinarians (to State Department of Health and to State Department of Agriculture); food service establishments; child day care facilities; schools.
- Federal regulations identify select agents and toxins that must be reported to the Centers for Disease Control or the U.S. Department of Agriculture (unless entity is registered to possess, use, or transfer select agents)

##### **Communicable Disease Investigation ([4.22](#))**

- Duties of local health officer
  - Review and determine appropriate action.
  - Conduct investigations and institute control measures.
  - Notify state Department of Health of notifiable condition upon completion of case investigation.
- Authority of local health officer

- Carry out additional steps to verify diagnosis reported by health care provider.
- Require person suspected of having reportable disease to be examined.
- Investigate case or suspected case of reportable disease, if necessary.
- Require notification of additional conditions of public health importance.
- Duties of state Department of Health related to investigation.
  - Provide consultation and technical assistance to local health departments when requested.
  - Conduct investigations and institute control measures.

### **Confidentiality (4.30)**

- Federal and State Law Protecting Health Care Information
  - Federal: HIPAA ([45 CFR pts. 160, 164](#)). General Rule: Covered entity (health plan, health care clearinghouse, and health care providers who transmit certain transactions electronically) may not use or disclose protected health care information except as permitted by HIPAA. If a covered entity is a public health authority, it may use protected health information for certain public health activities. Preempts less stringent state laws.
  - State: HCIA ([chapter 70.02 RCW](#)). General rule: Health care providers and health care facilities may not disclose health care information without a patient's written authorization, except as authorized by [RCW 70.02.050](#). State and local agencies obtaining information pursuant to [RCW 70.02.050](#) are to establish record acquisition, retention, and security policies consistent with HCIA.
- Disclosures Related to Communicable Disease Control
  - Disclosures permitted by HIPAA
    - Disclosures otherwise authorized by law.
    - Disclosures for public health activities.
    - Disclosures to avert a threat to health and safety.
  - Disclosures permitted by HCIA
    - To federal, state, or local public health authorities to the extent required by law.
    - To federal, state, or local public health authorities when needed to protect the public health.
    - To avoid or minimize an imminent danger.
  - Disclosures by local and state health departments
    - Local and state Health Department not to disclose report information identifying an individual case or suspected case except to:
    - Employees or other officials needing to know for administering public health laws and regulations in chapter [246-101 WAC](#);
    - Health care providers and others for the purpose of collecting additional information about a case or suspected case, as required for disease control.
- Public Records Act
  - PRA provides that HCIA applies to inspection and copying of health care information of patients.
  - PRA permits third parties affected by requests to be notified.

## **Communicable Disease Control ([Chapter 5.00](#))**

### **Social Distancing Measures ([5.20](#))**

- Intended to decrease spread of disease of decreasing opportunities for close contact among individuals. Examples:
  - Closing schools and large child care centers.
  - Limiting social interaction at various facilities.
  - Closing churches, theaters, and other places where crowds gather.
  - Suspending large gatherings, such as sports events and concerts.
  - Suspending non-essential government activity.
- Implementation may be voluntary or compulsory.
- Authorities:
  - Heads of political subdivisions in response to emergency. (See [§ 2.42.](#))
  - Local health officer to prevent spread of disease. (See [§ 3.42.B.](#))
  - Governor in response to an emergency. (See [§ 2.32.B.](#))

### **Isolation and Quarantine ([5.30](#); [5.31](#))**

- Form of social distancing
- Under rules adopted by State Board of Health, local health officer has authority to implement isolation and quarantine. Applies to person or group of persons.
- Local health officer can initiate emergency detention by issuing emergency detention order or by petitioning the superior court *ex parte*.
- Local health officer may initiate emergency detention when (s)he:
  - Has made reasonable efforts to gain voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, and inspection and closure of facilities, or has determined that seeking voluntary compliance would create a risk of serious harm; and
  - Has reason to believe that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or chemical, biological, or radiological agent that could spread to or contaminate others if remedial action is not taken; and
  - Has reason to believe that the person or group of persons would pose a serious and imminent risk to the health and safety of others if not detained for purposes of isolation or quarantine.

#### **Local Health Officer Emergency Detention Order**

- Local health officer shall issue written emergency detention order as soon as reasonably possible and always within twelve hours of detention, with copies to persons, by posting in some cases.
- An order issued by a local health officer shall constitute the duly authorized application of lawful rules adopted by the State Board of Health and must be enforced by all police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department in accordance with [RCW 43.20.050](#).
- No explicit authority for arrest by law enforcement, though see [RCW 10.31.100\(1\)](#).

**Court proceedings for emergency detention** (see [Isolation and Quarantine Checklist](#) on page 17)

- The local health officer may petition the superior court *ex parte* for an order authorizing involuntary detention of a person or group of persons for up to ten (10) days.
- The court shall issue the order if there is a reasonable basis to find that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.

**Court proceedings for continued detention** (see [Isolation and Quarantine Checklist](#) on page 18)

- The local health officer may petition the superior court for an order authorizing continued detention of a person or group of persons for up to thirty (30) days.
- The court shall grant the petition if it finds that there is clear, cogent, and convincing evidence that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.

**Court proceedings for an additional period of continued detention** (see [Isolation and Quarantine Checklist](#) on page 18)

- Prior to the expiration of a court order for continued detention, the local health officer may petition the superior court for an order to continue isolation or quarantine for up to an additional thirty (30) days.
- Isolation or quarantine may be continued when the court finds that there is a reasonable basis to require continued isolation or quarantine to prevent a serious and imminent risk to the health and safety of others.

**Statutes and rules that supersede**

- The provisions of [WAC 246-100-040](#) shall be superseded by state statutes and rules, and state and federal emergency declarations that contain procedures for detention, examination, counseling, testing, treatment, vaccination, isolation, or quarantine for:
  - Specified health emergencies; or
  - Specified communicable diseases, including, but not limited to, tuberculosis and HIV.

**Right to representation**

- A person or group of persons isolated or quarantined has a right to be represented by counsel.
  - If a person or group requests counsel and cannot afford counsel, the court shall appoint counsel consistent with the provisions of [chapter 10.101 RCW](#).
  - The local health officer must provide adequate means of communication between persons or groups and their counsel.

**Relief from isolation or quarantine**

- A person or group of persons detained by order of the local health officer may apply to the court for an order to show cause why the individual or group should not be released. The court shall rule on the application to show cause within forty-eight (48) hours of its filing. If the court grants the application, the court shall schedule a hearing on the order to show cause as soon as practicable. The issuance of an order to show cause shall not stay or enjoin an isolation or quarantine order.
- A person or group isolated or quarantined may request a hearing for remedies regarding breaches to the conditions required by [WAC 246-100-](#)

[045](#). A request for a hearing shall not stay or enjoin an isolation or quarantine order. Upon receipt of a request alleging extraordinary circumstances justifying the immediate granting of relief, the court shall fix a date for a hearing as soon as practicable. Upon receipt of a request, the court shall fix a date for a hearing within five (5) days from receipt of the request. In extraordinary circumstances and for good cause shown, the local health authority may move the court to extend the time for a hearing.

#### **Infection control and consolidation of hearings**

- Any hearings for relief involving a petitioner or petitioners judged to be contagious will be conducted in a manner that utilizes appropriate infection control and minimizes the risk of disease transmission.

#### **Consular notification**

- Article 36(1)(b) of the Vienna Convention on Consular Relations provides that a non-U.S. citizen who is arrested or detained must be informed that consular officials may be notified about the detention. In addition, some bilateral consular agreements require notification.

#### **Isolation and quarantine conditions and principles** [\(5.32\)](#)

- The local health officer must adhere to conditions and principles described in [WAC 246-100-045](#) when isolating or quarantining a person or group.

#### **Federal Authority to Control Communicable Disease** [\(5.34\)](#)

- Federal government has authority to control spread of communicable disease from foreign countries into the U.S. and from one state or possession into another state or possession.
- Authorities include isolation and quarantine for diseases listed in Executive Orders of the President

#### **Animal Health** [\(5.40\)](#)

- The Washington Department of Agriculture has authority to prevent the spread of diseases affecting animals.
- Veterinarians are required to report certain diseases.
- The Director of Agriculture may order animal quarantine, hold, treatment, and destruction.
- The Secretary of Health may take action if an emergency arises out of an outbreak of diseases communicable to humans caused by pet animals.
- The Secretary of the U.S. Department of Agriculture and the Director of the Centers for Disease Control have certain authorities related to importation of animals, movement in interstate commerce, and risk of interstate spread of disease.

#### **Courtroom Procedure** [\(Chapter 7.00\)](#)

##### **Appearance other than in person** [\(7.11\)](#)

- Telephonic or videoconference
- Requirements in local criminal rules for analogy: observation, presence of counsel, security, interpreters, contemporaneous document transmission, and public access.

##### **Relocation of Court** [\(7.21\)](#)

- Conduct of hearings without a clerk
- Conduct of hearings within or without the county
- Relocation of the Court by agreement of the Court and Council

**Additional Judicial Personnel ([7.31](#))**

- Judges from other courts of the state
- Visiting superior court judges from other counties
- Pro tempore judges
- Commissioners
- Appointment of other officers

**Consolidation of Cases ([7.32](#))**

- Criteria for consolidation of isolation and quarantine cases at [WAC 246-100-065](#)

**Emergency Court Closure ([7.40](#))**

- Emergency court closure governed by [GR 21](#)

**Presiding Judge in Superior Court District and Limited Jurisdiction Court District ([7.50](#))**

- Provisions for presiding judge in each superior court district and each limited jurisdiction court district contained in [GR 29](#)

## **ISOLATION AND QUARANTINE CHECKLIST**

### **Petition *Ex Parte* for Involuntary Isolation or Quarantine**

- ☐ Petition *ex parte* for involuntary isolation or quarantine shall specify:
  - ☐ The identity of all persons or groups to be subject to isolation or quarantine;
  - ☐ The premises where isolation or quarantine will take place;
  - ☐ The date and time at which isolation or quarantine will commence;
  - ☐ The suspected communicable disease or infectious agent if known;
  - ☐ The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious disease if known;
  - ☐ The measures taken by the local health officer to seek voluntary compliance or the basis on which the local health officer determined that seeking voluntary compliance would create a risk of serious harm;
  - ☐ The medical basis on which isolation or quarantine is justified.
- ☐ Petition to be accompanied by declaration of the local health officer attesting to the facts asserted in the petition, together with any further information that may be relevant to the court's consideration.
- ☐ Notice to the persons or groups identified in the petition to be in accordance with the rules of civil procedure.
- ☐ Hearing to occur within seventy-two (72) hours of filing, excluding Saturdays, Sundays, and holidays.

### **Court Order Authorizing Isolation or Quarantine**

- ☐ Test for granting petition: reasonable basis to find that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.
- ☐ Court order authorizing isolation or quarantine as a result of an *ex parte* hearing shall:
  - ☐ Specify a maximum duration of isolation or quarantine not to exceed ten (10) days.
  - ☐ Identify the isolated or quarantined persons or groups identified by name or shared or similar characteristics or circumstances.
  - ☐ Specify factual findings warranting isolation or quarantine pursuant to [WAC 246-100-040](#).
  - ☐ Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of [WAC 246-100-040](#).
  - ☐ Specify the premises where isolation or quarantine will take place.
  - ☐ Be served on all affected persons or groups in accordance with the rules of civil procedure.

**NOTE:** [WAC 246-100-040](#) provides that the local health officer may petition the superior court *ex parte* or may issue an emergency detention order causing persons to be immediately detained for purposes of isolation and quarantine for up to ten (10) days. If the local health officer initiates emergency detention and does not petition the court *ex parte*, then the court's involvement would not begin until and unless the health officer petitioned the court for an order authorizing continued isolation or quarantine for up to thirty (30) days. (See below.)

### **Petition for Continued Isolation or Quarantine**

- ☐ Petition for continued isolation or quarantine shall specify:
  - ☐ The identity of all persons or groups subject to isolation or quarantine.
  - ☐ The premises where isolation or quarantine is taking place.
  - ☐ The communicable disease or infectious agent if known.
  - ☐ The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious disease if known.
  - ☐ The medical basis on which continued isolation or quarantine is justified.
- ☐ Petition to be accompanied by declaration of the local health officer attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.
- ☐ Petition to be accompanied by a statement of compliance with the conditions and principles contained in [WAC 246-100-045](#).
- ☐ Notice to the persons or groups identified in the petition to be in accordance with the rules of civil procedure.
- ☐ Persons isolated and quarantined have a right to counsel, including court-appointed.
- ☐ Hearing to occur within seventy-two (72) hours of filing, excluding Saturdays, Sundays, and holidays, unless health officer applies for continuance based on extraordinary circumstances and for good cause shown. Continuance granted at court's discretion, giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the public threat, and the availability of necessary witnesses and evidence.

### **Court Order Authorizing Continued Isolation or Quarantine**

- ☐ Test for granting petition for continued isolation or quarantine: Clear, cogent, and convincing evidence that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.
- ☐ Court order granting petition for continued isolation or quarantine shall:
  - ☐ Specify a maximum duration of isolation or quarantine not to exceed thirty (30) days.
  - ☐ Identify the isolated or quarantined persons or groups by name or shared or similar characteristics or circumstances.
  - ☐ Specify factual findings warranting isolation or quarantine pursuant to [WAC 246-100-040](#).
  - ☐ Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of [WAC 246-100-040](#).
  - ☐ Specify the premises where isolation or quarantine will take place.
  - ☐ Be served on all affected persons or groups in accordance with the rules of civil procedure.

### **Petition to Extend Court-Ordered Continued Isolation or Quarantine**

- ☐ Must be filed prior to the expiration of the court order for continued detention.
- ☐ Petition requirements same as Petition for Continued isolation & Quarantine (above).
- ☐ Test for granting petition: reasonable basis to require continued isolation or quarantine to prevent a serious and imminent threat to the health and safety of others.
- ☐ Order shall be for a period not to exceed thirty (30) days.

## 1.00 JURISDICTION, VENUE, AND RELEVANT CIVIL ACTIONS

### 1.10 FEDERAL v. STATE

#### 1.11 The United States Constitution and Public Health

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.* U.S. CONST. pmb1.

- A. **Federal Constitution Generally Silent.** Though the preamble of the United States Constitution does refer to promotion of the “general Welfare”, the remainder of the Constitution, including the Amendments, provides no specific role for the federal government in matters of public health. Viewed in conjunction with the Tenth Amendment’s reservation of undelegated powers to the states, this indicates that the federal government’s public health powers are limited to those subjects that fall within its jurisdiction (defense, interstate commerce, and tax powers) and that responsibility for safeguarding public health in other areas falls largely to the states. *See, e.g., Carolene Products Co. v. Evaporated Milk Ass’n*, 93 F.2d 202, 204 (7th Cir. 1937) (“While the police power is ordinarily said to be reserved by the states, it is obvious that it extends fully likewise to the federal government in so far as that government acts within its constitutional jurisdiction...The police power referred to extends to all the great public needs...Its dimensions are identical with the dimensions of the government’s duty to protect and promote the public welfare.”)

In addition, the federal government is responsible for protecting the public health in discrete geographic areas directly under its control (e.g., military bases).

- B. **Federal Public Health Statutory Powers.** Pursuant to its enumerated powers, the federal government may exercise some public health functions. For example, as defined by statute, the Secretary of the U.S. Department of Health and Human Services may declare and respond to public health emergencies, restrict the movement of, or quarantine, persons arriving from foreign countries or in interstate travel to prevent the spread of specified communicable diseases, cooperate with and assist states in the enforcement of quarantine, maintain a national pharmaceutical stockpile of drugs, vaccines and supplies to provide for the emergency health security of the United States, and regulate biological products. *See* 42 U.S.C. §§ 262-271, 300hh-12; *infra* § 5.34. The federal government may also assume responsibility for public health emergencies precipitated by acts of war or terrorism.

In all other cases, the states bear the primary responsibility for preventing and responding to threats to the public's health. See, e.g., *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905) ("The safety and health of the people of Massachusetts are, in the first instance, for that commonwealth to guard and protect. They are matters that do not ordinarily concern the national government."); *Compagnie Francaise v. Louisiana Bd. of Health*, 186 U.S. 380, 387 (1902) ("That from an early day the power of the states to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress is beyond question. That until Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question.").

Moreover, states will almost certainly be required to provide significant assistance and resources during public health emergencies falling within the federal government's jurisdiction.

**A. *The Source of the State's Public Health Authority.*** The power of the state to protect the public's health is derived from the police power.

1. **The police power.** The "police power" is the power to promote the public safety, health, and morals by restraining and regulating the use of liberty and property. See *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) ("Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, matters of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." (Internal citations omitted.)).
2. **Police power purposes and limitations as described in Washington case law.** "However difficult it may be to give a precise or satisfactory definition of 'police power,' there is no doubt that the state, in the exercise of such power, may prescribe laws tending to promote the health, peace, morals, education, good order and welfare of the people. Police power is an attribute of sovereignty, an essential element of the power to govern, and a function that cannot be surrendered. It exists without express declaration, and the only limitation upon it is that it must reasonably tend to correct some evil or promote some interest of the state, and not violate any direct or positive mandate of the constitution." *Snohomish County Builders Ass'n v. Snohomish Health Dist.*, 8 Wn. App. 589, 598, 508 P.2d 617 (1973) (quoting *Shea v. Olson*, 185 Wash. 143, 153, 53 P.2d 615 (1936)).

**B. *The Washington State Constitution.***

1. **The State Board of Health established.** "There shall be established by law a state board of health . . . with such powers as the legislature may direct." WASH. CONST. art. XX, § 1. See *infra* [§ 3.20](#).
2. **Local governments may pass rules and regulations concerning public health.** Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws. WASH. CONST. art. XI, §11. [RCW 70.05.060](#) provides that local boards of health shall have supervision over all matters pertaining to the preservation of life and health of the people within its jurisdiction. See *infra* [§ 3.40](#).

**1.20 STATE AND LOCAL VENUE DETERMINATIONS**

**1.21 Courts of Jurisdiction**

**A. *Jurisdiction Over Public Health Matters.***

1. **Superior Courts have original jurisdiction.** The superior courts have original jurisdiction in all cases of law and equity as provided in [RCW 2.08.010](#), including all proceedings in which jurisdiction shall not have been vested exclusively in some other court.

The superior court has jurisdiction over actions to enjoin violations or threatened violations of public health laws, rules, or regulations. [RCW 43.70.190](#). Superior Court judges also have the power to issue writs of mandamus and prohibition, and writs of habeas corpus on petition by or on behalf of persons in actual custody in their respective counties. [RCW 2.08.010](#); see *infra* [§ 1.30](#).

**B. *Courts of Appellate Jurisdiction over Public Health Matters.***

1. **Court of Appeals.** The Washington Court of Appeals is vested with appellate jurisdiction over cases (except as provided in subsection [B.3](#) below) in which a final judgment has been entered by a trial court of record and all interlocutory appeals. This jurisdiction extends to actions brought under [RCW 43.70.190](#) to enjoin violations or threatened violations of public health laws.
2. **Supreme Court.** The Supreme Court is vested with appellate jurisdiction over all actions and proceedings (except as provided in subsection [B.3](#) below). The method of seeking review by the Supreme Court of a decision of the Court of Appeals or the superior court is by discretionary review. This appellate jurisdiction extends to actions brought under [RCW 43.70.190](#) to enjoin violations or threatened violations of public health laws.

3. **Limitation on appellate jurisdiction.** The appellate jurisdiction of the Court of Appeals and the Supreme Court does not extend to civil actions at law for the recovery of money or personal property where the original amount in controversy does not exceed two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. [RCW 2.06.030](#); [RCW 2.04.010](#).

## 1.22 Venue

### A. *Proper Venue.*

1. **Superior court of county at issue or Thurston County Superior Court.** Actions to enjoin violations or threatened violations of any public health laws of the state or of any rules or regulations made by the State Board of Health or the Department of Health may be brought in the superior court in the county in which the violation occurred or is about to occur, or in the superior court of Thurston County. [RCW 43.70.190](#).
2. **Waiver of venue.** If an action is brought in the wrong county, it may nevertheless be tried in that county, unless the defendant properly requests that the action be held in the proper county. [CR 82](#).

- B. **Change of Venue.** Venue may be changed as set forth in chapter [4.12 RCW](#) and [CR 82](#). Each party is limited to one (1) change of venue except for causes not in existence when the first change was allowed. [RCW 4.12.060](#).

## 1.30 WRITS OF HABEAS CORPUS AND PERSONAL RESTRAINT PETITIONS

Isolation and quarantine orders are civil (not criminal) actions that impose a civil “restraint” upon an individual by the state. [WAC 246-100-055](#) establishes procedures for relief from isolation and quarantine in some circumstances. An individual might, however, choose to seek relief via normal appellate review, or under two related mechanisms: a petition for a writ of habeas corpus or a personal restraint petition. This section provides a procedural overview of these mechanisms; it does not provide a substantive discussion of the habeas corpus or personal restraint petition law, which will necessarily be highly fact dependent.

### A. *Petition for Writ of Habeas Corpus*

1. **Controlling law.** Petitions for a writ of habeas corpus are governed by chapter [7.36 RCW](#).
2. **Jurisdiction.** Writs of habeas corpus may be granted by the Supreme Court, the Court of Appeals, or Superior Court. [RCW 7.36.040](#).

When a writ of habeas corpus is filed in either the Court of Appeals or the Supreme Court, it will be considered as a personal restraint petition pursuant to the rules of appellate procedure. “These [rules] establish a

single procedure for original proceedings in the appellate court to obtain relief formally available by petition for writ of habeas corpus.” [RAP 16.3\(a\)](#).

When a writ of habeas corpus is filed in Superior Court, it should probably be considered by the trial court and not transferred to an appellate court. (*Dicta* by the Supreme Court in a criminal case allows a habeas petition to be transferred to the appellate courts as a personal restraint petition. See *Toliver v. Olsen*, [109 Wn.2d 607](#), 746 P.2d 809 (1987). It is unclear whether this rule applies in the civil context of an isolation or quarantine order.)

The personal restraint petition rules set forth in RAP 16 do not apply to habeas corpus proceedings in Superior Court.

3. **Who may file writ of habeas corpus.** Any person “restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus.” [RCW 7.36.010](#). Parents, guardians, spouses, and next of kin may file on behalf of the restrained individual. [RCW 7.36.020](#).
4. **Contents and writ.** The writ of habeas corpus must be signed and verified and specify:
  - a. By whom the petitioner is restrained of his liberty, and the place where, (naming the parties if they are known, or describing them if they are not known).
  - b. The cause or pretense of the restraint according to the best of the knowledge and belief of the applicant.
  - c. If the restraint be alleged to be illegal, in what the illegality consists. [RCW 7.36.030](#).
5. **Effect of writ.** The writ of habeas corpus requires the officer or party restraining the individual to bring the restrained person before the court “at such time and place as the court or judge shall direct” to “do and receive what shall be ordered by the court.” [RCW 7.36.050](#).

In the case of an individual isolated or quarantined for public health reasons, the court may exercise its discretion under this provision (“at such time and place as the court or judge shall direct”) and, if necessary, direct the person to appear by telephone conference call (or other reasonable limitation). See *infra* [§ 7.00](#).

6. **Duty of court to act “without delay.”** Writs of habeas corpus must be acted upon – that is, the individual brought before the court – “without delay.” [RCW 7.36.040](#).

In the public health context, this may result in writs of habeas corpus being filed in Superior Court in an effort to obtain a quick decision. As discussed below, writs of habeas corpus filed in the Court of Appeals or Supreme Court are considered as personal restraint petitions and subject to an established briefing schedule.

7. **Standard of review.** Generally, a habeas petitioner must show actual prejudice resulting from constitutional error. *In re Hagler*, [97 Wn.2d 818](#), 825-26, 650 P.2d 1103 (1982). An individual seeking habeas relief who relies on bare allegations unsupported by citation to authority, facts, or persuasive reasoning cannot sustain his or her burden of proof. *In re Cook*, [114 Wn.2d 802](#), 813-14, 792 P.2d 506 (1990).

## **B. Personal Restraint Petitions**

1. **Controlling law.** Personal restraint petitions are governed by [RAP 16.3](#) to [16.15](#), [RAP 16.24](#) to [16.27](#), and chapter [10.73 RCW](#).
2. **Jurisdiction.** The Court of Appeals and Supreme Court have concurrent jurisdiction over personal restraint petitions. However, the Supreme Court will usually exercise its jurisdiction by transferring the petition to the Court of Appeals. [RAP 16.3\(c\)](#), [16.5\(b\)](#).

A personal restraint petition filed in Superior Court should be transferred to the Court of Appeals for lack of Superior Court jurisdiction. See *State v. Mott*, 49 Wn. App. 115, 742 P.2d 158 (1987); [RAP 16.3](#), [16.8](#).

The appellate courts may transfer a personal restraint petition to Superior Court to determine specific facts or for a decision on the merits. [RAP 16.11](#), [16.12](#), [16.14](#).

3. **Elements of a personal restraint petition.** [RAP 16.7](#) sets forth the mandatory elements of a personal restraint petition, which include:
  - a. Status of Petitioner
  - b. Grounds for Relief
  - c. Statement of Finances
  - d. Request for Relief
  - e. Oath
  - f. Verification (criminal proceedings only)
4. **Government parties.** When the responding party is the government, the petitioner need not name the specific agency or individual responsible for allegedly restraining the person's liberty. The governmental agency or person most familiar with the original proceedings shall respond to the petition. Two or more agencies may file separate or joint responses. [RAP 16.6](#).

In the public health context, the agency responsible for requesting the isolation or quarantine order would be the responding party.

5. **Standard of Review.** To prevail on a personal restraint petition, an individual must show that he or she is unlawfully restrained. *In re Cashaw*, [123 Wn.2d 138](#), 148-49, 866 P.2d 8 (1994); [RAP 16.4](#). To establish unlawful restraint, the petitioner must show either a constitutional violation or a violation of the laws of the State of Washington. [RAP 16.4\(c\)\(2\)](#), (6); *In re Personal Restraint Petition of Liptrap*, [127 Wn. App. 463](#), 469, 111 P.3d 1227 (2005). Specifically,

petitioner must show either: (1) actual and substantial prejudice arising from constitutional error, or (2) nonconstitutional error that inherently results in a “complete miscarriage of justice.” *In re Hews*, [99 Wn.2d 80](#), 88, 660 P.2d 263 (1983).

Finally, in order to prevail in a personal restraint petition, a petitioner must set out the facts underlying the challenge and the evidence available to support the factual allegations. *In re Rice*, [118 Wn.2d 876](#), 885-86, 828 P.2d 1086 (1992). Bare assertions and conclusory allegations are insufficient to gain consideration of a personal restraint petition. *Id.* at 886.

#### 1.40 STATUTORY WRITS OF MANDAMUS AND PROHIBITION

A party affected by governmental action or inaction in response to a public health emergency may choose to challenge the action or inaction in court by means of a writ of prohibition or a writ of mandamus. The writs may be issued by any court, except district or municipal courts, to an inferior tribunal, or to a corporation, board or person. There must be an absence of an adequate remedy at law, and the application for the writ must be based on affidavit of a person beneficially interested. [RCW 7.16.170](#), [.300](#). Except as otherwise provided in chapter [7.16 RCW](#), the rules of civil procedure apply to the writ proceedings. [RCW 7.16.340](#).

#### 1.41 Writ of Mandamus

A writ of mandamus may be issued by the court to compel the performance of an act which the law enjoins as a duty resulting from an office, trust, or station. [RCW 7.16.160](#). The writ of mandamus may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party immediately to do the act required to be performed or to show cause before the court at a specified time why the party has not done the act as commanded. The peremptory writ is in similar form, except the words requiring the party to show cause why (s)he has not done the act as commanded are omitted and a return date inserted. [RCW 7.16.180](#). The writ is served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. [RCW 7.16.270](#). Where the writ presents questions of fact that are essential to the determination of the motion, the court, in its discretion, may order the question tried before a jury, and postpone the argument until after the trial. The question to be tried must be distinctly stated in the order for trial. [RCW 7.16.210](#).

#### 1.42 Writ of Prohibition

A writ of prohibition is the counterpart of the writ of mandamus. It arrests the proceedings of any tribunal, corporation, board, or person, when such proceedings are without or in excess of the body's jurisdiction. [RCW 7.16.290](#). The writ of prohibition must be either alternative or peremptory. The alternative writ must state generally the allegations against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified until further order of the court, and to show cause before the court at a specified time why the party should not be absolutely restrained from further proceedings in such action or matter. The peremptory writ is in similar form, except that the words requiring the party to show cause why (s)he should not be absolutely restrained, etc., must be omitted and a return date inserted. [RCW 7.16.310](#). The provisions of chapter [7.16 RCW](#) relating to a writ of mandamus apply to the proceedings for a writ of prohibition. [RCW 7.16.320](#).

#### 1.50 **APPLICABILITY OF KING COUNTY RULES OF COURT TO PUBLIC HEALTH CASES**

As a general rule, public health cases are conducted in the same manner as other proceedings in superior court. That is, all court rules, including those of administration, evidence, trial procedure, and appellate procedure, apply to public health cases.

While some public health cases will present unique factual scenarios and practical exigencies, the court rules make no specific procedural exceptions for cases involving public health emergencies. In such cases, the court should utilize routine procedures for resolving and/or expediting urgent matters on their dockets subject to any statutes or rules specific to public health cases. For example, pursuant to [WAC 246-100-040](#), the court may enter an order authorizing isolation or quarantine as a result of an *ex parte* hearing if specified requirements are met. See *infra* [§ 5.31.B.1.d](#).

## 2.00 EMERGENCIES AND EMERGENCY MANAGEMENT

### 2.10 OVERVIEW

The Washington Emergency Management Act, chapter [38.52 RCW](#), provides the authority for the state and political subdivisions to respond to emergencies. The Emergency Management Division of the state Military Department, under the direction of the Adjutant General, is responsible for state coordination during an emergency. Political subdivisions are required to establish local emergency organizations, and the heads of political subdivisions are authorized to respond to emergencies. See *generally* chapter [38.52 RCW](#). The Governor may assume direct operational control if there is a disaster beyond local control. [RCW 38.52.050](#)(1). Furthermore, the Governor is authorized to proclaim an emergency and issue emergency orders. See chapter [43.06 RCW](#). The municipal codes of political subdivisions also may contain authorities for local proclamations of emergency and the issuance of emergency orders. See, e.g., chapter [12.52 K.C.C.](#); chapter [10.02 SMC](#). The Emergency Management Act defines political subdivisions as any county, city, or town. [RCW 38.52.010](#)(3). Therefore, political subdivisions may have concurrent authorities during an emergency.

The statutory definition of "emergency" encompasses emergencies that threaten public health. [RCW 38.52.010](#)(6)(a). State and local boards of health, the Secretary of Health, and local health officers have broad authority to protect the public health. See *infra* [§ 3.00](#). The exercise of their authority is independent of a proclamation of an emergency by the Governor or the head of a political subdivision. Therefore, during a communicable disease emergency, the authorities for emergency management and protection of public health could overlap. Overlapping authorities could include:

- (1) The authority of heads of political subdivisions to proclaim emergencies and issue emergency orders;
- (2) The authority of the Governor to proclaim an emergency and issue emergency orders; and
- (3) The authority of local boards of health, local health officers, and the Secretary of Health to protect the public health, which is not dependent on a proclamation of emergency.

### 2.20 CONDITIONS OF EMERGENCY

#### A. *Emergency Defined.*

1. **Definition.** "Emergency or disaster" means an event or set of circumstances which:
  - a. Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or
  - b. Reaches such a dimension or degree of destructiveness as to warrant the Governor declaring a state of emergency pursuant to [RCW 43.06.010](#). [RCW 38.52.010](#)(6)(a).

## 2.30 STATE ORGANIZATION AND AUTHORITY

### 2.31 State Organization

#### A. ***State Military Department, Emergency Management Division.***

1. **Administration of state emergency management program.** The state Military Department shall administer the comprehensive emergency management program of the state of Washington. [RCW 38.52.005](#) and [.010\(11\)](#).
2. **Adjutant General.**
  - a. **Director of Military Department.** The Adjutant General is the Director of the Military Department. [RCW 38.52.010\(9\)](#). Provisions regarding the appointment and duties of the Adjutant General are contained in chapter [38.12 RCW](#).
  - b. **Responsibilities.** The Adjutant General shall be responsible to the Governor for carrying out the program for emergency management of the state. [RCW 38.52.030](#) (2), (3).

### 2.32 Authority of the Governor

#### A. ***Proclamation of Emergency.***

1. **Finding the existence of an emergency.** The Governor, after finding that a public disorder, disaster, emergency, or riot exists within this state or any part thereof which affects life, health, property, or the public peace, may proclaim a state of emergency in the area affected. [RCW 43.06.010\(12\)](#).
2. **Area where emergency powers effective.** The powers granted the Governor during a state of emergency shall be effective only within the area described in the proclamation. *Id.*
3. **Procedural requirements.**
  - a. The proclamation shall be:
    - i. In writing;
    - ii. Signed by the Governor;
    - iii. Filed with the Secretary of State. [RCW 43.06.210](#).
  - b. The Governor shall give as much public notice as practical through the news media regarding the issuance of the proclamation. *Id.*
4. **Termination.** The state of emergency shall cease to exist upon the issuance of a proclamation declaring the termination of the emergency by the Governor. *Id.*
  - a. **When termination must occur.** The Governor must terminate the state of emergency when order has been restored in the area affected. *Id.*

**B. Powers and Duties.**

1. **Powers pursuant to proclamation of emergency.** After proclaiming a state of emergency, and prior to its termination, the Governor may, in the area described by the proclamation, issue orders that include:
  - a. Prohibiting persons from being on public streets, in public parks, or at public places during curfew;
  - b. Prohibiting persons from assembling;
  - c. Prohibiting use of streets, highways or public ways;
  - d. Prohibiting such other activities as the Governor reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace. [RCW 43.06.220](#).
2. **General supervision of emergency management functions.** The Governor, through the Adjutant General, shall have general supervision and control of the emergency management functions in the Military Department. [RCW 38.52.050](#)(1).
  - a. **Conditions for direct operational control.** In the event of a disaster beyond local control, the Governor may assume direct operational control over all or any part of the emergency functions within this state. *Id.*
  - b. **Exercise of powers without regard to procedures and formalities required by law.** If the Governor has assumed direction operational control, the Governor may exercise the powers vested in [RCW 38.52.070](#)(2) in light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to:
    - i. Budget law limitations;
    - ii. Requirements of competitive bidding and publication of notices;
    - iii. Provisions pertaining to the performance of public work;
    - iv. Entering into contracts;
    - v. Incurring of obligations;
    - vi. Employment of temporary workers;
    - vii. Rental of equipment;
    - viii. Purchase of supplies and materials
    - ix. Levying of taxes;
    - x. Appropriation and expenditures of public funds. *Id.*
  - c. **Power to enter into contracts and incur obligations.** The Governor may enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. *Id.*
3. **Authority.** The Governor is authorized and empowered to:
  - a. **Make, amend, and rescind the necessary orders, rules, and regulations** to carry out the provisions of chapter [38.52 RCW](#) within the limits of the authority conferred upon him or her therein and with due consideration of the plans of the federal government.
  - b. **Enter into mutual aid arrangements** with other states or territories, or provinces of the Dominion of Canada.

- c. **Coordinate mutual aid interlocal arrangements between political subdivisions** of the state.
  - d. **Delegate any administrative authority** vested under chapter [38.52 RCW](#) and provide for subdelegation of such authority.
  - e. **Appoint metropolitan or regional area coordinators** when practicable.
  - f. **Cooperate with federal officials, and with officers and agencies of other states.** [RCW 38.52.050\(3\)\(e\)](#).
4. **Utilization of existing services, equipment, supplies, and facilities.** In carrying out the provisions of chapter [38.52 RCW](#), the Governor is directed to utilize the services, equipment, supplies and facilities of:
- a. **Existing public departments, offices, and agencies of the state, political subdivisions, and all other municipal corporations thereof** including but not limited to districts and quasi municipal corporations organized under the laws of the state of Washington. [RCW 38.52.110\(1\)](#).
  - b. **Officers and personnel required to cooperate.** Officers and personnel are directed to cooperate notwithstanding any other provision of law. *Id.*
5. **Commandeering of service and equipment after emergency proclamation by Governor.** The service and equipment of as many citizens as considered necessary may be commandeered after proclamation by the Governor of the existence of a disaster. [RCW 38.52.110\(2\)](#).
- a. **Persons authorized to command service and equipment.**
    - i. The Governor;
    - ii. The chief executive of counties, cities, and towns; and
    - iii. The emergency management directors of local political subdivisions. *Id.*
6. **Enforcement by organizations for emergency management.** It shall be the duty of every organization for emergency management and the officers thereof to execute and enforce orders, rules, and regulations made by the Governor. [RCW 38.52.150\(1\)](#).
7. **Violations and Penalties.** Criminal sanctions apply to several types of conduct during an emergency:
- a. Willfully violating any provision of an order issued by the Governor. [RCW 43.06.220\(3\)](#).
  - b. Maliciously destroying or damaging any real or personal property or maliciously injuring another. [RCW 43.06.230](#).
  - c. Disorderly conduct. [RCW 43.06.240](#).
  - d. Refusing to leave public way or property when ordered. [RCW 43.06.250](#).
  - e. Violating a rule, regulation, or order issued under chapter [38.52 RCW](#). [RCW 38.52.150\(2\)](#).

8. **Continuity of Government.** “In case of the removal, resignation, death or disability of the governor,” duties automatically devolve upon the following officers, and in the following order:
  - a. Lieutenant Governor
  - b. Secretary of State
  - c. Treasurer
  - d. Auditor
  - e. Attorney General
  - f. Superintendent of Public Instruction
  - g. Commissioner of Public Lands. WASH. CONST. art. III, §10.

**C. Case Law Involving Actions by the Governor During an Emergency.**

1. **Delegation of police power to Governor in times of emergency.** The statutory powers in chapters [43.06 RCW](#) and [38.52 RCW](#) evidence a clear intent by the Legislature to delegate requisite police power to the Governor in times of emergency. *Cougar Business Owners Ass’n v. State*, [97 Wn.2d 466](#), 474, 647 P.2d 481 (1982).
2. **Discretion to determine start and end of emergencies.** The Governor has discretion to determine both the start and end of an emergency. Emergency powers are not limited to clean-up operations; actions of a preventative nature may be taken. *Id.* at 475-76.

**2.40 LOCAL ORGANIZATION AND AUTHORITY**

**2.41 Local Organization**

**A. Political Subdivisions.**

1. **Local emergency management organizations authorized.** Each political subdivision of this state is authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan. [RCW 38.52.070](#)(1).
  - a. **Political subdivision defined.** “Political subdivision” means any county, city, or town. [RCW 38.52.010](#)(3).
2. **Responsibilities of local organizations for emergency management.** Each local organization or joint local organization shall:
  - a. Perform emergency management functions within the territorial limits of the political subdivision within which it is organized;
  - b. Conduct such functions outside of such territorial limits as may be required. [RCW 38.52.070](#)(1).
3. **Director of emergency management.**
  - a. **Appointment.** Each local organization shall have a director who shall be appointed by the executive head of the political subdivision. *Id.*

- b. **Responsibilities.** The director shall have direct responsibility for the organization, administration, and operation of the local organization, subject to the direction and control of the executive officer. *Id.*
- c. **Executive head defined.** “Executive head” means:
  - i. In charter counties with an elective office of county executive, the county executive;
  - ii. In other counties, the county legislative authority;
  - iii. In cities and towns where the mayor is directly elected, the mayor;
  - iv. In cities and towns with council manager forms of government, the city manager. [RCW 38.52.010](#)(8).

## 2.42 Local Authority

### A. **Statutory Powers During Emergencies.**

1. **Exercise of powers without regard to procedures and formalities required by law.** Each political subdivision is authorized to exercise the powers vested under [RCW 38.52.070](#)(2) in light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to:
  - a. Budget law limitations;
  - b. Requirements of competitive bidding and publication of notices;
  - c. Provisions pertaining to the performance of public work;
  - d. Entering into contracts;
  - e. Incurring of obligations;
  - f. Employment of temporary workers;
  - g. Rental of equipment;
  - h. Purchase of supplies and materials
  - i. Levying of taxes;
  - j. Appropriation and expenditures of public funds. *Id.*
2. **Power to enter into contracts and incur obligations.** Each political subdivision in which a disaster occurs shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. *Id.*
3. **Utilization of existing services, equipment, supplies, and facilities.** In carrying out the provisions of chapter [38.52 RCW](#), the Governor and the executive heads of political subdivisions are directed to utilize the services, equipment, supplies and facilities of:
  - a. **Existing public departments, offices, and agencies of the state, political subdivisions, and all other municipal corporations thereof** including but not limited to districts and quasi municipal corporations organized under the laws of the state of Washington. [RCW 38.52.110](#)(1).
  - b. **Officers and personnel required to cooperate.** Officers and personnel are directed to cooperate notwithstanding any other provision of law. *Id.*

4. **Commandeering of service and equipment after emergency proclamation by Governor.** The service and equipment of as many citizens as considered necessary may be commandeered after proclamation by the Governor of the existence of a disaster. [RCW 38.52.110\(2\)](#).
  - a. **Persons authorized to command service and equipment.**
    - i. The Governor;
    - ii. The chief executive of counties, cities, and towns; and
    - iii. The emergency management directors of local political subdivisions. *Id.*

## 2.50 KING COUNTY CODE PROVISIONS

### A. *Emergency Management Organization.*

1. **Office of emergency management.** The Department of Executive Services includes the administrative office of emergency management. [K.C.C. 2.16.035](#).
  - a. **Duties.** The duties of the office include:
    - i. Planning for and providing effective direction, control and coordinated response to emergencies;
    - ii. Being responsible for the emergency management functions defined in [K.C.C. 2.56](#);
    - iii. Managing the E911 emergency telephone program. [K.C.C. 2.16.035.G](#).
  - b. **Contact number.** The Duty Officer telephone number for the King County Office of Emergency Management is 206-296-3830.

### B. *Emergency Defined.*

1. **Definition.** "Emergency or disaster" means an event or set of circumstances such as fire, flood, explosion, storm, earthquake, epidemic, riot or insurrection, which:
  - a. Demands the immediate preservation of order or of public health or the restoration to a condition of usefulness of any public property, the usefulness of which has been destroyed or where delay will result in financial loss to the county or for the relief of a stricken community or which reaches such a dimension or degree of destructiveness as to warrant the Executive proclaiming a state of emergency pursuant to [K.C.C. 12.52.030](#). [K.C.C. 12.52.010.A](#).

### C. *Proclamation of Emergency.*

1. **Existence of emergency.** Whenever an emergency or disaster occurs in King County and results in the death or injury of persons or the destruction of property to such extent as to require, in the judgment of the Executive, extraordinary measures to protect the public peace, safety and welfare, the Executive may proclaim in writing the existence of such an emergency. [K.C.C. 12.52.030.A](#).

2. **Notification.**

- a. The proclamation shall be delivered to all news media within King County, and other means shall be used, in the Executive's judgment, to give notice of the proclamation to the public. [K.C.C. 12.52.030.D.](#)

**D. Powers and Duties of Executive.**

1. **Orders pursuant to proclamation of emergency.** Upon the proclamation of an emergency, and during the existence of the emergency, the Executive may make orders that include:
  - a. Recalling King County employees from vacation, canceling days off, authorizing overtime, or recalling selected retired employees.
  - b. Waiving certain requirements related to procurement and contracting.
  - c. Imposing a general curfew applicable to King County as a whole, or to such geographical area(s) of King County and during such hours, as the Executive deems necessary.
  - d. Requiring any or all business establishments to close and remain closed until further order.
  - e. Closing to the public any or all public places including streets, alleys, public ways, schools, parks, beaches, amusement areas and public buildings.
  - f. Such other orders as are imminently necessary for the protection of life and property. [K.C.C. 12.52.030.B.](#)
2. **Procedural requirements for orders.**
  - a. **Filing with the clerk of the council.** Any executive order shall be filed with the clerk of the council not later than 10:00 a.m. of the second business day after it is issued. [K.C.C. 12.52.030.C.](#)
    - i. **Exception.** Except for orders waiving requirements related to procurement and contracting. *Id.*
  - b. **Termination.** Executive orders shall continue in effect until terminated by order of the Executive or action by the council by ordinance. *Id.*
    - i. **Exception.** Orders waiving requirements related to procurement and contracting shall terminate as provided for in [K.C.C. 4.16.050.](#) *Id.*
3. **Supervision and control.** The Executive shall have general supervision and control of the emergency management organization in the event of a disaster. [K.C.C. 2.56.040.A.](#)
4. **Make, amend, and rescind the necessary orders, rules, and regulations.** The Executive is authorized and empowered to make, amend and rescind the necessary orders, rules, and regulations to implement the provisions of [K.C.C. 2.56](#) and [K.C.C. 12.52](#), consistent with the provisions of state law and the plans of the state and federal government. [K.C.C. 2.56.040.B.1.](#)
5. **Use of existing resources.** The Executive is directed to use the services, equipment, supplies, and facilities of existing departments,

offices and agencies of the county to the maximum extent possible.  
[K.C.C. 2.56.050.A.](#)

6. **Commandeering of service and equipment after emergency proclamation by Governor.** The Executive, in the event of a disaster, after proclamation by the Governor of the existence of a disaster, shall have the power to commandeer the service and equipment of as many citizens as considered necessary in the light of the disaster proclaimed.  
[K.C.C. 2.56.050.B.](#)

**E. *Emergency Purchasing.***

1. **Waiver of certain requirements.**
  - a. Upon issuance of a proclamation of emergency, the Executive may waive certain requirements related to procurement and contracting.  
[K.C.C. 4.16.050.A.](#)
  - b. The waivers may refer to:
    - i. Any contract relating to the county's lease or purchase of tangible personal property or services;
    - ii. Contracts for public works as defined in [RCW 39.04.010](#); or
    - iii. The selection and award of professional and/or technical services consultant contracts. *Id.*
2. **Procedural requirements.**
  - a. **Certain waivers to be forwarded to the clerk of the council.**

Waivers for the following shall be forwarded to the clerk of the council no later than 10:00 a.m. on the second business day after issuance:

    - i. Waivers for contracts, which combined for each emergency, exceed two hundred fifty thousand (250,000) dollars; or
    - ii. Waivers for contracts in excess of appropriation. [K.C.C. 4.16.050.B.](#)
  - b. **Duration of waivers.** Waivers shall continue to have effect until:
    - i. Terminated by order of the Executive or action of the council; or
    - ii. Expiration, which shall be ten (10) calendar days after there have been contracts entered into, which combined, encumber funds either in excess of two hundred fifty thousand (250,000) dollars, or in excess of appropriation. *Id.*
    - iii. The council, by motion, may extend a waiver beyond the ten-day period. *Id.*
3. **Expenditures in excess of appropriations.** Reasonably necessary expenditures to respond to the emergency will not result in contracts or purchases being null and void, notwithstanding the lack of an appropriation. [K.C.C. 4.16.050.D.](#)

**F. *Continuity of Government.***

1. **Office of the Executive.** In the event of a vacancy in the office of the Executive, the powers and duties of the office of the Executive, subject to the provisions of the King County Charter, shall be exercised by a

temporary interim successor designated pursuant to executive order.  
[K.C.C. 2.56.060.A.](#)

2. **Council business during emergency.** Council business during an emergency or disaster shall be conducted as follows:
  - a. **Conduct of business.** Whenever, due to an emergency, it becomes imprudent, inexpedient, or impossible to conduct affairs at the regular and usual place, the legislative body may meet at any place within or without the territorial limits of King County on the call of the chairman or any two members of the council. [K.C.C. 1.28.010](#), [2.56.060.B.](#)
  - b. **Continuity of government.** In the event that a disaster reduces the number of councilmembers, then those councilmembers available and present shall have full authority to act in all matters as the county council. [K.C.C. 1.28.020](#), [2.56.060.B.](#)
  - c. **Council vacancies.** As soon as practicable, the available councilmembers shall act in accordance with the charter and state law to fill existing vacancies on the council. *Id.*
3. **Other elected officials.** Elected officers of the county, other than the Executive and county councilmembers, are authorized and directed to designate temporary interim successors to the office of such officer in the event a vacancy occurs during an emergency caused by a disaster. [K.C.C. 2.56.060.C.](#)
4. **Appointed officers.** The Executive shall permit each appointed officer of the county to designate temporary interim successors in the event a vacancy occurs during an emergency subject to a disaster. [K.C.C. 2.56.060.D.](#)
5. **Termination of succession.**
  - a. **Temporary interim basis until regularly appointed successor designated.** Any county officer succeeding to office on a temporary interim basis shall exercise the duties of the office only until a regularly appointed successor is designated by the customary means. [K.C.C. 2.56.060.E.](#)
    - i. **Successors to elected offices.** Successors to fill vacancies in elective offices shall be appointed by the council pursuant to Section 680 of the King County Charter and the state constitution until a permanent successor is elected. [K.C.C. 2.56.060.E.1.](#)
    - ii. **Successors to appointed offices.** Successors to fill vacancies in appointed offices shall be made by the Executive or other authorized official, subject to confirmation where applicable. [K.C.C. 2.56.060.E.2.](#)

**G. Violations and Penalties.** Criminal sanctions apply to conduct during an emergency:

1. Failure or refusal to obey an order proclaimed by the Executive. [K.C.C. 12.52.030.E.](#)

**A. Proclamation of Emergency.**

1. **Existence of emergency.** Whenever riot, unlawful assembly, insurrection, other disturbance, the imminent threat thereof, or any fire, flood, storm, earthquake or other catastrophe or disaster occurs in the city and results in or threatens to result in the death or injury of persons or the destruction of property or the disruption of local government to such extent as to require, in the judgment of the Mayor, extraordinary measures to prevent the death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering, the Mayor shall forthwith proclaim in writing of the existence of a civil emergency. [SMC 10.02.010.A.](#)
2. **Procedural requirements.**
  - a. **Filing with the clerk of the city council.** Any proclamation shall be filed with the city clerk within forty-eight (48) hours of issuance or as soon as practical for presentation to the city council for ratification and confirmation, modification, or rejection. [SMC 10.02.010.C.](#)
  - b. **Action by the city council.** The city council may, by resolution, modify or reject the proclamation.
    - i. If rejected, it shall be void.
    - ii. Modification or rejection shall be prospective only and shall not affect actions taken prior to the modification or rejection.
    - iii. The council shall endeavor to act on any proclamation within forty-eight (48) hours of its presentation. *Id.*
3. **Notification.** The proclamation shall be delivered to the Governor, and to the extent practicable, to all news media within the city, and shall be disseminated by other means. [SMC 10.02.100.](#)
4. **Termination.**
  - a. The emergency shall cease to exist upon the issuance of a proclamation by the Mayor or by a resolution passed by not less than two-thirds (2/3) of all members of the city council. [SMC 10.02.010.B.](#)
  - b. A proclamation to terminate the emergency shall be issued when extraordinary measures are no longer required for the protection of the public peace, safety and welfare. *Id.*

**B. Powers and Duties of Mayor.**

1. **Orders pursuant to a proclamation of emergency.** Upon the proclamation of a civil emergency, and during the existence of the emergency, the Mayor may make orders that include:
  - a. Imposing a general curfew applicable to the city as a whole, or to such geographical area(s) of the city and during such hours, as the Mayor deems necessary.

- b. Requiring any or all business establishments to close and remain closed until further order.
    - c. Closing to the public any or all public places including streets, alleys, public ways, schools, parks, beaches, amusement areas and public buildings.
    - d. Directing the use of all public and private health, medical, and convalescent facilities and equipment to provide emergency health and medical care for injured persons.
    - e. Such other orders as are imminently necessary for the protection of life and property. [SMC 10.02.020](#).
  - 2. **Procedural requirements for orders.** Requirements for filing with the city clerk and presentation to the city council are contained in [SMC 10.02.020](#).
  - 3. **Authority to enter into contracts and incur obligations.** See [SMC 10.02.030](#).
  - 4. **Use of existing resources.** The Mayor shall utilize to the maximum extent practicable the services, equipment, supplies, and facilities of existing departments, offices and agencies of the city, state and other municipal corporations. [SMC 10.02.040.A](#).
  - 5. **Commandeering of service and equipment after emergency proclamation by Governor.** The Mayor, in the event of a disaster, after proclamation by the Governor of the existence of a disaster, shall commandeer the service and equipment of as many citizens as considered necessary in the light of the disaster proclaimed. [SMC 10.02.040.B](#).
- C. *Violations and Penalties.*** It is unlawful for anyone to:
- 1. Fail or refuse to obey an order proclaimed by the Mayor. [SMC 10.02.110](#).

## 3.00 HEALTH AGENCIES AND BOARDS

### 3.10 OVERVIEW

Responsibility for public health is shared among the Washington State Board of Health, the Washington State Department of Health, and local health jurisdictions. The State Board of Health develops public health policy and adopts rules, including rules for communicable disease control. See *generally* chapter [43.20 RCW](#). The Department of Health provides leadership and coordination for public health programs, and in certain situations the Secretary of Health may exercise the powers of a local health officer. See *generally* chapter [RCW 43.70](#).

At the local level, public health is primarily the responsibility of local boards of health and local health officers. The local board of health supervises matters relating to public health. See [RCW 70.05.060](#). The local health officer has a variety of powers and duties, including control and prevention of the spread of dangerous, contagious, or infectious diseases. See [RCW 70.05.070](#). The Governor and heads of political subdivisions have authority to proclaim emergencies and issue emergency orders. See *supra* [§ 2.00](#). Therefore, during a communicable disease emergency, the authorities for emergency management and protection of public health could overlap. See discussion *supra* [§ 2.10](#).

### 3.20 WASHINGTON STATE BOARD OF HEALTH

#### A. *Establishment.*

1. **Membership.** The State Board of Health consists of ten (10) members: the Secretary of Health or the Secretary's designee and nine (9) persons appointed by the Governor. [RCW 43.20.030](#).
2. **Chairman selected by Governor.** The Governor shall select the chairman from among the appointed members. *Id.*

#### B. *Powers and Duties Related to Communicable Disease Control.*

1. **Rulemaking.** In order to protect the public health, the State Board of Health shall adopt rules related to, among other topics:
  - a. Imposition and use of isolation and quarantine;
  - b. Prevention and control of infectious and noninfectious diseases, and the receipt and conveyance of remains of deceased persons; and other sanitary matters best controlled by universal rule. [RCW 43.20.050\(2\)\(d\) and \(e\)](#).
2. **Delegation of rulemaking authority.** The State Board of Health may delegate any of its rulemaking authority to the Secretary of Health and rescind such authority. [RCW 43.20.050\(3\)](#).

**C. *Enforcement of State Board of Health Rules.***

1. **Enforcement by public officers and employees.** All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township, shall enforce all rules adopted by the State Board of Health. [RCW 43.20.050](#)(4).
2. **Enforcement by local boards of health.** Each local board of health shall enforce through the local health officer or the administrative officer, if any, the public health statutes of the state and rules promulgated by the State Board of Health and the Secretary of Health. [RCW 70.05.060](#)(1).
3. **Enforcement by local health officers.** Each local health officer, acting under the direction of the local board of health or of the administrative officer, if any, shall enforce the public health statutes of the state, rules of the State Board of Health and Secretary of Health, and all local health rules, regulations and ordinances within his or her jurisdiction. [RCW 70.05.070](#)(1).

**3.30 WASHINGTON STATE DEPARTMENT OF HEALTH**

**A. *Establishment.***

1. **Department of state government.** The Department of Health is a department of state government. [RCW 43.70.020](#).
2. **Secretary of Health.** The Secretary shall be appointed by and serve at the pleasure of the Governor in accordance with [RCW 43.17.020](#). [RCW 43.70.030](#).

**B. *Powers and Duties Related to Communicable Disease Control.***

1. **Enforcement of laws and rules.** The Secretary shall strictly enforce all laws for the protection of the public health and all rules, regulations, and orders of the State Board of Health. [RCW 43.70.130](#)(3).
2. **Investigation of outbreaks of disease and advice to local health officers.** The Secretary shall investigate outbreaks and epidemics of disease and advise local health officers as to measures to be taken. [RCW 43.70.130](#)(5).
3. **Investigation of conditions constituting a threat to the public health.** The Secretary may investigate, examine, sample or inspect any article or condition constituting a threat to the public health, including but not limited to outbreaks of communicable diseases. [RCW 43.70.170](#). The investigation may include:
  - a. **Examination of ledgers, books, accounts, memorandums.** *Id.*
  - b. **Free and unimpeded access.** *Id.*
  - c. **Subpoenas.** *Id.*

- d. **Order prohibiting sale or disposition pending results of investigation.** The Secretary may issue an order prohibiting the disposition or sale of any food or other item involved in the investigation. [RCW 43.70.180](#). The order shall not be effective for more than fifteen (15) days without the commencement of legal action as provided for under [RCW 43.70.190](#). *Id.*
4. **General supervision over work of local health departments.** The Secretary shall exercise general supervision over the work of all local health departments and establish uniform reporting systems by local health officers to the state Department of Health. [RCW 43.70.130\(6\)](#).
5. **Determination of character of disease.** If the question arises whether a person is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state Department of Health is notified, and then the opinion of the executive officer of the state Department of Health or any physician he or she may appoint shall be final. [RCW 70.05.100](#).

**C. *Enforcement Powers.***

1. **Enforcement at request of local health officer.** Upon the request of a local health officer, the Secretary is authorized to take legal action to enforce the public health laws, regulations of the State Board of Health, or local regulations within the jurisdiction served by the local health department, and may institute any civil legal proceeding including a proceeding under [Title 7 RCW](#) (Special proceedings and actions). [RCW 43.70.200](#).
2. **Duty of Assistant Attorney General, Prosecuting Attorney, or City Attorney.** It shall be the duty of each assistant attorney general, prosecuting attorney, or city attorney to whom the Secretary reports any violation of any provision of chapter [43.20](#) or [43.70 RCW](#), or regulations promulgated under them, to cause appropriate proceedings to be instituted. [RCW 43.70.100](#).

**D. *Authority to Act in Local Matters.***

1. **Action in lieu of local boards of health.** The Secretary shall enforce the public health laws of the state and the regulations of the Department of Health or the State Board of Health in local matters when:
  - a. An emergency exists; and
  - b. The local board of health has failed to act with sufficient promptness or efficiency, or is unable to act, or when no local board has been established. [RCW 43.70.130\(4\)](#).
2. **Action in lieu of local health officers.** The Secretary may exercise the same authority as a local health officer when:
  - a. The safety of the public health demands it in an emergency; or
  - b. The local health officer fails or is unable to act; or
  - c. By agreement. [RCW 43.70.130\(7\)](#).

### 3.40 LOCAL HEALTH BOARDS, DEPARTMENTS, AND OFFICERS

#### 3.41 Structure

##### A. **Local Boards of Health.**

1. **County or district.** A local board of health is the county or district board of health. [RCW 70.05.010](#)(3).
2. **Membership.**
  - a. **Counties with a home rule charter.** In counties with a home rule charter, the county legislative authority shall establish the local board of health. [RCW 70.05.035](#). The county legislative authority:
    - i. May appoint elected officials from cities and towns. *Id.*
    - ii. May appoint persons other than elected officials so long as they do not constitute a majority. *Id.*
  - b. **Counties without a home rule charter.** In counties without a home rule charter, the board of county commissioners shall constitute the local board of health, unless the county is part of a health district pursuant to chapter [70.46 RCW](#). [RCW 70.05.030](#). The board of county commissioners:
    - i. May expand the board of health to include elected officials from cities and towns. *Id.*
    - ii. May expand the board of health to include persons other than elected officials so long as they do not constitute a majority. *Id.*
3. **Coextensive with boundaries of the county.** The jurisdiction of the local board of health is coextensive with the boundaries of the county. [RCW 70.05.030](#), [.035](#).

##### B. **Local Health Departments.**

1. **County or district.** A local health department is a county or district which provides public health services to persons within the area. [RCW 70.05.010](#)(1). See discussion *infra* [§ 3.60](#).
2. **Combined city-county health department.** Any city of one hundred thousand (100,000) or more population and the county in which it is located are authorized to establish and operate a combined city and county health department. [RCW 70.08.010](#).
  - a. **Director of public health.** A city and county that agree to operate a combined city-county health department shall appoint a director of public health. *Id.*
  - b. **Powers and duties of local health officer.** A director of public health shall exercise all powers and perform all duties by law vested in the local health officer. [RCW 70.08.020](#).

**C. Local Health Officers.**

**1. Appointment.**

- a. **Counties with a home rule charter, except combined city-county departments.** In counties with a home rule charter, the local health officer shall be appointed by the official designated in the county charter. [RCW 70.05.035](#).
- i. **Exception for health districts.** In home rule counties that are part of a health district, the local health officer shall be appointed by the local board of health. [RCW 70.05.050](#).
- b. **Counties without a home rule charter, except combined city-county departments.** In counties without a home rule charter, a local health officer shall be appointed pursuant to [RCW 70.05.050](#). [RCW 70.05.040](#).
- c. **Combined city-county departments.** Where a combined department is established, the director of public health shall be appointed by the county executive of the county and the mayor of the city with majority vote confirmation by the legislative authorities of the county and the city. [RCW 70.08.040](#).

**2. Qualifications.**

- a. **Local health officer.** The local health officer shall have the qualifications specified in [RCW 70.05.050](#), [.051](#).
- b. **Director of public health.** A director of public health shall meet the standards specified in [RCW 70.08.030](#).

**3. Relationship to local board of health.**

- a. **Administrative officer unless administrative officer appointed.** The local health officer shall act as the administrative officer for the local board of health except where the board has appointed an administrative officer. [RCW 70.05.050](#).
- b. **Acts under direction.** The local health officer acts under the direction of the local board of health or the direction of the administrative officer, if any. [RCW 70.05.070](#).

**3.42 Powers and Duties Related to Communicable Disease Control**

**A. Powers and Duties of Local Boards of Health.**

1. **Rulemaking.** The local board of health shall enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof. [RCW 70.05.060\(3\)](#).
2. **Enforcement of state public health statutes and rules.** The local board of health shall enforce through the local health officer or the administrative officer, if any, the public health statutes of the state and rules promulgated by the State Board of Health and the Secretary of Health. [RCW 70.05.060\(1\)](#).

3. **Supervision of health and sanitary measures.** The local board of health shall supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction. [RCW 70.05.060\(2\)](#).
4. **Control and prevention of disease.** The local board of health shall provide for the control and prevention of any dangerous, contagious or infectious disease within its jurisdiction. [RCW 70.05.060\(4\)](#).

**B. *Powers and Duties of Local Health Officers.***

1. **Enforcement of state public health statutes and rules and local health rules, regulations, and ordinances.** A local health officer shall enforce the public health statutes of the state, rules of the State Board of Health and Secretary of Health, and all local health rules, regulations and ordinances within his or her jurisdiction, including filing of actions authorized by [RCW 43.70.190](#). [RCW 70.05.070\(1\)](#).
2. **Maintenance of health and sanitation supervision.** The local health officer shall take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction. [RCW 70.05.070\(2\)](#).
3. **Control and prevention of disease.** The local health officer shall control and prevent the spread of any dangerous, contagious or infectious disease within his or her jurisdiction. [RCW 70.05.070\(3\)](#).
4. **Determination of character of disease until state Department of Health makes determination.** If the question arises whether a person is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state Department of Health is notified, and then the opinion of the executive officer of the state Department of Health or any physician he or she may appoint shall be final. [RCW 70.05.100](#).
5. **Investigation and disease control measures.** Local health officers shall, when necessary, conduct investigations and institute disease control and contamination control measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities, consistent with those indicated in the 17th edition, 2000 of the *Control of Communicable Disease Manual*, published by the American Public Health Association, or other measures as he or she deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information. [WAC 246-100-036\(3\)](#).
6. **Control of communicable disease in schools or day care centers.** When there is an outbreak of a contagious disease, such that there is the potential for a case or cases within a school or day care center, the local health officer, after consultation with the Secretary of Health or designee,

shall take medically appropriate actions, including, but not limited to closing schools or day care centers, causing cessation of certain activities, or excluding student, staff, or volunteers who are infected with or deemed susceptible to the disease. [WAC 246-110-020](#).

7. **Actions related to communicable disease tracking.** Local health officers have specific powers and duties related to the reporting and investigation of communicable diseases. See *infra* [§ 4.20](#).
8. **Implementation of isolation or quarantine.** Local health officers have specific powers and duties to implement isolation and quarantine. See *infra* [§ 5.30](#).

**C. Case Law Involving Actions by Local Health Boards and Officers.**

1. **Actions liberally construed.** Public health statutes and the actions of local boards of health and health officers are to be liberally construed. *Spokane County Health Dist. v. Brockett*, [120 Wn.2d 140](#), 148-49, 839 P.2d 324 (1992).
2. **Local regulations may not conflict with state or federal law.** "While the statutory delegation under [RCW 70.05.060](#) is broad, such delegation does not include any power to enact regulations that conflict with state legislation." *Entm't Indus. Coal. v. Tacoma-Pierce County Health Dep't*, [153 Wn.2d 657](#), 663, 105 P.3d 985 (2005). See also *Lindsey v. Tacoma-Pierce County Health Dep't*, 195 F.3d 1065 (9th Cir. 1999) (holding that resolution of county board of health banning outdoor tobacco advertising was preempted by Federal Cigarette Labeling and Advertising Act).

## 3.50 VIOLATIONS AND PENALTIES

**A. Any Person.**

1. **Violation of rules and orders for control of disease.** It is a misdemeanor for any person to violate or refuse or neglect to obey any rules, regulations or orders made for the prevention and control of dangerous contagious or infectious diseases by a local board of health, a local health officer or administrative officer, if any; or the State Board of Health. [RCW 70.05.120](#)(4).
2. **Penalty.** Upon conviction:
  - a. A fine of not less than twenty-five (25) dollars nor more than one hundred (100) dollars; or
  - b. Imprisonment in the county jail not to exceed ninety (90) days; or
  - c. Both. *Id.*

**B. Public Officers and Employees.**

1. **Failure to enforce state rules.** All local boards of health, health authorities and officials, officers of state institutions, police officers,

sheriffs, constables, and all other officers and employees of the state, or any county, city, or township, shall enforce all rules adopted by the State Board of Health. [RCW 43.20.050](#)(4). A person mentioned in this section who fails to so act is subject to a fine. *Id.*

2. **Penalty.** Upon first conviction, a fine of not less than fifty (50) dollars and, upon second conviction, a fine of not less than one hundred (100) dollars. *Id.*

**C. *Members of Local Boards of Health.***

1. **Violation of state statutes or failure to obey or enforce state rules.** It is a misdemeanor for a member of a local board of health to violate any provisions of [chapters 70.05](#), [70.24](#), and [70.46 RCW](#) or to refuse or neglect to obey or enforce the rules, regulations or orders of the State Board of Health made for the control of any dangerous infectious disease or for the protection of the health of the people of the state. [RCW 70.05.120](#)(2).
2. **Penalty.** Upon conviction, a fine of not less than ten (10) dollars nor more than two hundred (200) dollars. *Id.*

**D. *Local Health Officers.***

1. **Failure to obey or enforce state statutes or rules.** A local health officer or administrative officer, if any, who refuses or neglects to obey or enforce the provisions of [chapters 70.05](#), [70.24](#), and [70.46 RCW](#) or the rules, regulations, or orders of the State Board of Health or who refuses or neglects to make prompt and accurate reports to the State Board of Health may be removed from office. [RCW 70.05.120](#)(1).
2. **Complaint and hearing.** Any person may complain to the State Board of Health. The State Board of Health may call a hearing to be held pursuant to the provisions of chapter [34.05](#) RCW and the rules of the State Board of Health adopted thereunder. *Id.*

## **3.60 HEALTH DISTRICTS**

**A. *Establishment.***

1. **Definition.** A health district means all the territory consisting of one or more counties organized pursuant to the provisions of [chapters 70.05](#) and [70.46 RCW](#). [RCW 70.05.010](#)(4).
2. **Two or more counties.** Health districts of two or more counties may be created by two or more boards of county commissioners. [RCW 70.46.020](#).
3. **One county.** A health district of one county may be created by the county legislative authority. [RCW 70.46.031](#).

**B. District Boards of Health.**

**1. District of two or more counties.**

- a. The district board of health shall consist of not less than five members for districts of two counties and seven members for districts of more than two counties, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners. [RCW 70.46.020](#).
- b. The boards of county commissioners for membership on the board:
  - i. May provide for elected officials from cities and towns;
  - ii. May provide for persons other than elected officials so long as they do not constitute a majority;
  - iii. Shall provide for appointment, term, and compensation or reimbursement of expenses. *Id.*

**2. District of one county.** The county legislative authority may specify membership and representation on the district board of health and:

- a. May appoint elected officials from cities and towns;
- b. May appoint persons other than elected officials so long as they do not constitute a majority. [RCW 70.46.031](#).

**C. Jurisdiction.**

- 1. Territory included in the district.** The district board of health shall constitute the local board of health for all territory included in the district. [RCW 70.46.060](#).

**D. Powers and Duties.**

- 1. All powers and duties.** The district board of health shall exercise all the powers and perform all the duties vested in the county board of health of any county included in the district. [RCW 70.46.060](#).

**3.70 RELATIONSHIP BETWEEN STATE AND LOCAL HEALTH DEPARTMENTS**

**A. State Board of Health Rules.**

**1. Local boards of health and local health officers shall enforce.**

- a. Each local board of health shall enforce through the local health officer or administrative officer, if any, the rules promulgated by the State Board of Health and the Secretary of Health. [RCW 70.05.060\(1\)](#).
- b. Each local health officer, acting under the direction of the local board of health or under direction of the administrative officer, if any, shall enforce the rules of the State Board of Health and the Secretary of Health. [RCW 70.05.070\(1\)](#).

**B. *Authority of Secretary to Act in Local Matters.***

1. **Action in lieu of local boards of health.** The Secretary shall enforce the public health laws of the state and the regulations of the Department of Health or the State Board of Health in local matters when:
  - a. An emergency exists; and
  - b. The local board of health has failed to act, or is unable to act with sufficient promptness or efficiency, or when no local board has been established. [RCW 43.70.130](#)(4).
2. **Action in lieu of local health officers.** The Secretary may exercise the same authority as a local health officer when:
  - a. The safety of the public health demands it in an emergency; or
  - b. The local health officer fails or is unable to act; or
  - c. By agreement. [RCW 43.70.130](#)(7).

**3.80 KING COUNTY CODE PROVISIONS**

**A. *Seattle-King County Department of Public Health.***

1. **Combined city-county department.** The city of Seattle and King County operate a combined city-county health department under [chapters 70.05](#) and [70.08 RCW](#). [K.C.C. 2.16.080.A](#).
2. **Duties of the department.** The King County Code establishes the duties of the divisions of the department. [K.C.C. 2.16.080.B. to H](#).
3. **Contact number.** The Duty Officer telephone number for the Seattle-King County Department of Health is 206-296-4606.

**B. *King County Board of Health.***

1. **Membership.** The King County Code establishes the membership of the King County Board of Health. [K.C.C. 2.35.021](#).

## 4.00 **COMMUNICABLE DISEASE TRACKING**

### 4.10 **OVERVIEW**

Disease reporting allows public health officials to investigate communicable diseases and take steps to protect the public. The Washington Administrative Code requires health care providers, laboratories, and health care facilities to report “notifiable conditions” to local health departments or, for some conditions, to the state Department of Health. See *generally* chapter [246-101 WAC](#). Health care providers and health care facilities also are required to report disease outbreaks. [WAC 246-101-105\(1\)\(c\)](#), [-305\(1\)\(d\)](#).

This chapter also discusses federal and state privacy laws. See discussion *infra* [§ 4.30](#).

### 4.20 **COMMUNICABLE DISEASE REPORTING AND INVESTIGATION**

#### 4.21 Communicable Disease Reporting

##### **A. Reportable Diseases.**

1. **Notifiable conditions.** State regulations specify notifiable communicable diseases and the time period in which the report must be made. See [WAC 246-101-101](#), [-201](#), [-301](#).
  - a. **Definition.** “Notifiable condition” means a disease or condition of public health importance, a case of which, and for certain diseases, a suspected case of which, must be brought to the attention of the local health officer or state health officer. [WAC 246-101-010\(30\)](#).
2. **Disease of suspected bioterrorism origin.** A “disease of suspected bioterrorism origin” is a notifiable condition to be reported immediately to the local health department. [WAC 246-101-101](#), [-201](#), [-301](#).
  - a. **Definition.** “Disease of suspected bioterrorism origin” means a disease caused by viruses, bacteria, fungi, or toxins from living organisms that are used to produce death or disease in humans, animals, or plants. Many of these diseases may have nonspecific presenting symptoms. The following situations could represent a possible bioterrorism event and should be reported immediately to the local health department:
    - i. A single diagnosed or strongly suspected case of disease caused by an uncommon agent or a potential agent of bioterrorism occurring in a patient with no known risk factors;
    - ii. A cluster of patients presenting with a similar syndrome that includes unusual disease characteristics or unusually high morbidity or mortality without obvious etiology; or
    - iii. Unexplained increase in a common syndrome above seasonally expected levels. [WAC 246-101-010\(11\)](#).
  - b. **Examples:** Anthrax and smallpox. [WAC 246-101-101](#), [-201](#), [-301](#).

3. **Other rare diseases of public health significance.** "Other rare diseases of public health significance" are notifiable conditions to be reported immediately to the local health department. *Id.*
  - a. **Definition.** "Other rare diseases of public health significance" means a disease or condition, of general public health concern, which is occasionally or not ordinarily seen in the state of Washington, including, but not limited to, viral hemorrhagic fevers, Rocky Mountain Spotted fever, and other tick borne diseases. This also includes a communicable disease that would be of general public concern if detected in Washington. [WAC 246-101-010\(31\)](#).
4. **Unexplained critical illness or death.** An "unexplained critical illness or death" is a notifiable condition to be reported immediately to the local health department. [WAC 246-101-101, -301](#).
  - a. **Definition.** "Unexplained critical illness or death" means cases of illness or death with infectious hallmarks but no known etiology, in previously healthy persons one (1) to forty-nine (49) years of age excluding those with chronic medical conditions (e.g., malignancy, diabetes, AIDS, cirrhosis). [WAC 246-101-010\(43\)](#).
5. **Additional conditions required by local health officer.** Each local health officer has the authority to require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer. [WAC 246-101-505\(11\)\(d\)](#).
6. **Outbreaks.** Outbreaks or suspected outbreaks are reportable to the local health department, even if the disease is not a notifiable condition. [WAC 246-101-105\(1\)\(c\), -305\(1\)\(d\)](#).
  - a. **Definition.** "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases. [WAC 246-101-010\(32\)](#).
  - b. **Examples.** Outbreaks or suspected outbreaks include, but are not limited to, suspected or confirmed outbreaks of chickenpox, influenza, viral meningitis, nosocomial infection suspected due to contaminated food products or devices, or environmentally related disease. [WAC 246-101-105\(1\)\(c\), -305\(1\)\(d\)](#).

**B. *Persons and Entities Having Duty to Report.***

1. **Health care providers.** Health care providers must notify public health authorities of the conditions listed in [WAC 246-101-101](#).  
**Procedures and other requirements.** See [WAC 246-101-105](#) to -120.
2. **Laboratories.** Laboratories must notify public health authorities of the conditions in [WAC 246-101-201](#).  
**Procedures and other requirements.** See [WAC 246-101-205](#) to -230.
3. **Health care facilities.** Health care facilities must notify public health authorities of the conditions in [WAC 246-101-301](#).  
**Procedures and other requirements.** See [WAC 246-101-305](#) to -320.

**C. Confidential Treatment of Reported Information.**

1. **Confidentiality of records and specimens.** Records and specimens containing or accompanied by patient-identifying information are confidential. [WAC 246-101-120](#), [-230](#), [-320](#).
  - a. **Local health officers to maintain confidentiality.** Local health officers shall establish a system at the local health department to maintain confidentiality of notifiable conditions case reports. [WAC 246-101-505\(2\)](#).
  - b. **State Department of Health to maintain confidentiality.** The state health officer or designee shall establish a system to maintain confidentiality of reports of cases and suspected cases. [WAC 246-101-610](#).
2. **Permissible disclosures.** See *infra* [§ 4.32](#).

**D. Other Persons and Entities with Responsibilities Related to Reporting.**

1. **Veterinarians.** See [WAC 246-101-405](#).

**NOTE:** Veterinarians also are required to report certain animal diseases to the Washington State Department of Agriculture. See *infra* [§ 5.41.B](#). This requirement is separate from the requirement contained in [WAC 246-101-405](#) to report to health departments and involves a separate list of reportable conditions affecting animals.

2. **Food service establishments.** See [WAC 246-101-410](#).
3. **Child day care facilities.** See [WAC 246-101-415](#).
4. **Schools.** See [WAC 246-101-420](#).

- E. **Select Agents and Toxins.** Federal regulations identify select agents and toxins that have the potential to pose a severe threat to public health and safety. [42 C.F.R. pt. 73](#). Clinical and diagnostic laboratories and other entities that are not registered to possess, use, or transfer select agents and toxins are required to report the identification or verification of a select agent or toxin to the Centers for Disease Control, [42 C.F.R. §§ 73.5\(a\)](#), [73.6\(a\)](#), or to the U.S. Department of Agriculture. [7 C.F.R. § 331.5\(a\)](#), [9 C.F.R. § 121.6\(a\)](#).

4.22 Communicable Disease Investigation

**A. Communicable Disease Investigation.**

1. **Duties of the local health officer.** Local health officers or the local health department shall:
  - a. Review and determine appropriate action for:
    - i. Each reported case or suspected case of a notifiable condition;
    - ii. Any disease or condition considered a threat to public health; and

- iii. Each reported outbreak or suspected outbreak of disease, requesting assistance from the state Department of Health when necessary. [WAC 246-101-505\(1\)](#).
  - b. Conduct investigations and institute control measures in accordance with [chapter 246-100 WAC](#). [WAC 246-101-505\(9\)](#).
  - c. Notify the state Department of Health of any condition notifiable to the local health department (except animal bites) upon completion of the case investigation. [WAC 246-101-505\(4\)](#).
2. **Authorities of the local health officer.** Each local health officer has the authority to:
- a. Carry out additional steps determined to be necessary to verify a diagnosis reported by a health care provider. [WAC 246-101-505\(11\)\(a\)](#).
  - b. Require any person suspected of having a reportable disease or condition to submit to examinations required to determine the presence of the disease or condition. [WAC 246-101-505\(11\)\(b\)](#).
  - c. Investigate any case or suspected case of a reportable disease or condition or other illness, communicable or otherwise, if deemed necessary. [WAC 246-101-505\(11\)\(c\)](#).
  - d. Require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer. [WAC 246-101-505\(11\)\(d\)](#).
3. **Duties of the state Department of Health related to investigation.** The Department of Health shall:
- a. Provide consultation and technical assistance to local health departments upon request. [WAC 246-101-605\(1\)](#).
  - b. Conduct investigations and institute control measures consistent with those indicated in the seventeenth edition, 2000 of *Control of Communicable Diseases Manual*, published by the American Public Health Association, except when superseded by more up-to-date measures, or when other measures are more specifically related to Washington State. [WAC 246-101-605\(6\)](#).

#### 4.30 CONFIDENTIALITY

##### 4.31 Federal and State Laws Protecting Health Care Information

The federal *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule) was adopted to implement the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191. The Privacy Rule limits the use and disclosure of protected health information (PHI). See generally [45 C.F.R. pts. 160, 164](#), subparts A, E. Washington's Uniform Health Care Information Act (HCIA), [chapter 70.02 RCW](#), also protects the confidentiality of health care information. However, both federal and state law allow for disclosure to public health authorities.

**A. HIPAA Privacy Rule.**

1. **Covered entities.** The Privacy Rule applies to three types of entities, referred to as "covered entities": health plans, health care clearinghouses, and health care providers who transmit certain transactions electronically. [45 C.F.R. § 160.102\(a\)](#).
  - a. **Hybrid entity status.** A single legal entity that performs both covered and non-covered functions may designate itself as a hybrid entity. If a covered entity is a hybrid entity, then the privacy requirements apply only to the health care components of the entity. See [45 C.F.R. §§ 164.103, .105](#).
2. **Protected Health Information.** "Protected health information" (PHI) is defined as "individually identifiable health information . . . that is (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or media." [45 C.F.R. § 160.103](#).
  - a. "Individually identifiable health information" is defined as information that . . .
    - i. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
    - ii. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
      - (A) That identifies the individual; or
      - (B) With respect to which there is a reasonable basis to believe the information can be used to identify the individual. *Id.*
3. **General rule.** A covered entity may not use or disclose PHI except as permitted or required by the Privacy Rule. [45 C.F.R. § 164.502](#).
4. **Public health departments as covered entities.** If a covered entity also is a public health authority, the covered entity is permitted to use PHI in all cases in which it is permitted to disclose PHI for public health activities under [45 C.F.R. § 164.512\(b\)\(1\)](#). [45 C.F.R. § 164.512\(b\)\(2\)](#).
5. **Contrary state law preempted.** The Privacy Rule requirements preempt contrary provisions of state law, with certain exceptions. Where a state law is more stringent than the Privacy Rule, the state law is not preempted. See [45 C.F.R. § 160.203](#).

**B. Washington HCIA.**

1. **Health care providers and facilities.** The HCIA applies to health care providers and facilities. See generally [chapter 70.02 RCW](#).
  - a. **Health care provider.** A "health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of Washington to provide health care in the ordinary course of business or practice of a profession. [RCW 70.02.010\(9\)](#).

- b. **Health care facility.** "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients. [RCW 70.02.010\(6\)](#).
2. **Health care information.** "Health care information" is defined as "any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care . . ." [RCW 70.02.010\(7\)](#).
3. **General rule.** A health care provider or health care facility may not disclose health care information without a patient's written authorization, except as authorized by [RCW 70.02.050](#). [RCW 70.02.020\(1\)](#).
  - a. **Exceptions.** [RCW 70.02.050](#) contains a variety of exceptions under which health care providers and health care facilities are either permitted to or required to disclose health care information.
4. **State or local agencies obtaining health care information.** State or local agencies obtaining information pursuant to [RCW 70.02.050](#) shall establish record acquisition, retention, and security policies that are consistent with chapter [70.02 RCW](#). [RCW 70.02.050\(3\)](#). Cf. discussion *supra* §§ 4.11.C.1.a (local health departments shall maintain confidentiality of notifiable conditions case reports), 4.11.C.1.b (the state Department of Health shall maintain confidentiality of reports of cases and suspected cases).

#### 4.32 Disclosures Related to Communicable Disease Control

##### A. ***Disclosures Permitted by HIPAA.***

1. **Disclosures otherwise authorized by law.** A covered entity may use or disclose PHI to the extent that such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law. [45 C.F.R. § 164.512\(a\)](#).
2. **Disclosures for public health activities.** A covered entity may disclose PHI for public health activities and purposes to:
  - a. A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
  - b. A public health authority or other government authority authorized by law to receive reports of child abuse or neglect;
  - c. A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purposes of activities related to the quality, safety, or effectiveness of such FDA-regulated product or activity;
  - d. A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or

- condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or
  - e. An employer, about an individual who is a member of the workforce of the employer, under specific circumstances. [45 C.F.R. § 164.512\(b\)\(1\)](#).
3. **Disclosures to avert a threat to health and safety.** A covered entity may, consistent with applicable law and ethical standards of conduct, use or disclose PHI, if the covered entity, in good faith, believes the use or disclosure:
    - a. Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
    - b. Is to a person or persons reasonably able to prevent or lessen the threat. [45 C.F.R. § 164.512\(j\)\(1\)\(i\)](#).

**B. *Disclosures Permitted by HCIA.***

1. **To federal, state, or local public health authorities to the extent required by law.** A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information. [RCW 70.02.050\(2\)\(a\)](#).
2. **To federal, state, or local public health authorities when needed to protect the public health.** A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is to federal, state, or local public health authorities when needed to protect the public health. *Id.*
3. **To avoid or minimize an imminent danger.** A health care provider or health care facility may disclose health care information to any person if the health care provider or facility reasonably believes that the disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual. [RCW 70.02.050\(1\)\(d\)](#).
  - a. **No obligation.** There is no obligation under chapter [70.02 RCW](#) on the part of the provider or facility to so disclose. *Id.*

**C. *Disclosures by Local and State Health Departments.***

1. **Cases and suspected cases.** A case or a suspected case is information reported to local health departments under the requirements of [chapter 246-101 WAC](#). See *supra* § 4.11. See also [WAC 246-101-010\(4\)](#), [\(41\)](#).
2. **Disclosures.** Local health departments and the state Department of Health are prohibited from disclosing report information identifying an individual case or suspected case, except to:
  - a. Employees of the local health department, or other official agencies needing to know for the purpose of administering public health laws and the regulations in [chapter 246-101 WAC](#);

- b. Health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control. [WAC 246-101-515\(1\)](#), [-610\(1\)](#).

**NOTE:** Special rules apply to sexually transmitted diseases and mental health records. No person may disclose the identity of any person related to testing or treatment for a sexually transmitted disease, except as authorized in [chapter 70.24 RCW](#). [RCW 70.24.105](#). No person may disclose mental health records, including the fact of admission, except as authorized in [RCW 71.05.390](#).

#### 4.33 Public Records Act

During a communicable disease outbreak, public agencies might receive requests under the Public Records Act for records related to the outbreak. Whether an agency must release a record will depend, in part, on whether the record is health care information under the HCIA. See *infra* [§ 4.33.A](#). Information that identifies a person who is in isolation because of a confirmed communicable disease is health care information. However, other records about the outbreak may not clearly be health care information, for example a list of persons who may have been exposed to a communicable disease.

- A. *Protection of Health Care Information.*** Washington's Public Records Act provides that the HCIA applies to the inspection and copying of health care information of patients. [RCW 42.56.360\(2\)](#). See *supra* [§ 4.31.B](#).
- B. *Responses to Requests for Public Records.***
  - 1. **Response within five business days.** Within five (5) business days of receiving a public record request, an agency must respond by either:
    - a. Providing the record;
    - b. Denying the request; or
    - c. Acknowledging that the request has been received and providing a reasonable estimate of the time the agency will require to respond to the request. [RCW 42.56.520](#).
  - 2. **Additional time to respond to request.** Additional time to respond to a request may be based upon the need to:
    - a. Clarify the intent of the request;
    - b. Locate and assemble the information requested;
    - c. Notify third persons or agencies affected by the request; or
    - d. Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. *Id.*
- C. *Court Protection of Public Records.***
  - 1. **Motion and affidavit for injunction.** A motion and affidavit to enjoin examination of any specific public record may be made by:
    - a. An agency or its representative; or

- b. A person who is named in the record or to whom the record specifically pertains. An agency may notify such persons. [RCW 42.56.540](#).
- 2. **Basis for injunction.** The court may enjoin examination of the record if examination would:
  - a. Clearly not be in the public interest and would substantially and irreparably damage any person; or
  - b. Substantially and irreparably damage vital governmental functions. *Id.*

## 5.00 **COMMUNICABLE DISEASE CONTROL**

### 5.10 **OVERVIEW**

Local health officers use a variety of strategies to control communicable disease, including isolation and quarantine. See, e.g., [WAC 246-100-036\(3\)](#). Washington law authorizes involuntary detention for purposes of isolation or quarantine of person(s) who have been exposed to, or are suspected to have been exposed to, a communicable disease. See [WAC 246-100-040](#) to [-070](#); *infra* [§ 5.30](#). The federal government also may detain persons arriving from foreign countries into the United States or traveling from one state or possession into another for purposes of controlling the introduction, transmission, and spread of communicable diseases listed in Executive Orders of the President. See 42 U.S.C. § 264; *infra* [§ 5.34](#).

Isolation and quarantine are forms of "social distancing." Social distancing measures are intended to decrease the spread of disease by decreasing opportunities for close contact among persons in the community. Pub. Health - Seattle & King County, Pandemic Influenza Response Plan (June 1, 2006). However, isolation and quarantine may be insufficient strategies. For example, quarantine is likely to be a viable strategy only during the first stage of an influenza pandemic because influenza is highly infectious and can be transmitted by people who appear to be well. *Id.*

This chapter also discusses control of animal diseases. See *infra* [§ 5.40](#).

### 5.20 **SOCIAL DISTANCING MEASURES**

#### **A. Social Distancing Measures.**

1. **Examples.** Social distancing measures, other than isolation and quarantine, may include:
  - a. Closing schools and large child care centers.
  - b. Limiting social interaction at libraries, colleges and universities.
  - c. Closing churches, theaters and other places where crowds gather.
  - d. Suspending large gatherings (sports events, concerts).
  - e. Suspending government functions not dedicated to pandemic response or critical continuity. Pub. Health - Seattle & King County, Pandemic Influenza Response Plan (June 1, 2006).
2. **Implementation.** Social distancing measures may be voluntary (recommended) or compulsory (ordered). The sources of authority could include:
  - a. Authority of heads of political subdivisions to respond to emergencies under [chapter 38.52 RCW](#). See *supra* [§ 2.42](#).
  - b. Authority of local health officers to prevent the spread of disease under [RCW 70.05.070](#). See *supra* [§ 3.42.B](#).
  - c. Governor's order following an emergency proclamation under [chapters 43.06](#) and [38.52 RCW](#). See *supra* [§2.32.B](#).

## 5.30 ISOLATION AND QUARANTINE

### 5.31 Isolation and Quarantine Proceedings

Isolation and quarantine are historically-recognized public health techniques used to contain the spread of infectious diseases. See, e.g., *Compagnie Francaise v. Louisiana Bd. of Health*, 186 U.S. 380 (1902) (recognizing power of states to institute quarantine to protect their citizens from infectious diseases). Isolation and quarantine require the separation of infected and potentially infected persons, respectively, from the public. This separation is achieved by confinement of the infected and/or potentially infected person(s) to treatment facilities, residences, and/or other locations, depending upon the nature of the implicated disease and the available facilities.

In many cases, individuals will voluntarily undertake isolation and quarantine procedures. However, if individuals are unwilling to undertake isolation or quarantine procedures or become noncompliant with procedures already in place, court assistance may be required.

*Communicable disease*: An illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [WAC 246-100-011\(7\)](#).

*Isolation*: The separation, for the period of communicability or contamination, of infected or contaminated persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of the infectious agent or contaminant from those infected or contaminated to those who are susceptible or may spread the agent or contaminant to others. [WAC 246-100-011\(18\)](#).

*Quarantine*: The limitation of freedom of movement of such well persons or domestic animals as have been exposed to, or are suspected to have been exposed to, an infectious agent, for a period of time not longer than the longest usual incubation period of the infectious agent, in such manner as to prevent effective contact with those not so exposed. [WAC 246-100-011\(26\)](#).

*Incubation period*: The period of time between a disease agent's entry into an organism and the organism's initial display of disease symptoms. During the incubation period, the disease is developing. Incubation periods are disease specific and may range from hours to weeks. See STEDMAN'S MEDICAL DICTIONARY 889 (27th ed. 2000).

**NOTE:** This chapter discusses state statutes and rules that govern isolation and quarantine for diseases that would pose a serious and imminent risk to others. Appendix A discusses the statutes and rules that govern control of tuberculosis. Separate statutes and rules pertain to control of sexually transmitted diseases ([chapter 70.24 RCW](#); [WAC 246-100-203](#)).

**A. General Powers of Isolation and Quarantine.**

**1. In whom powers vested.**

- a. **State Board of Health authority to adopt rules.** The State Board of Health shall adopt rules for the imposition and use of isolation and quarantine. [RCW 43.20.050\(2\)\(d\)](#).
- b. **Local health officer authority to implement isolation and quarantine.** The State Board of Health has adopted rules governing implementation of isolation and quarantine by local health officers. See generally [WAC 246-100-040](#) to [-070](#).

**2. Implementation.**

- a. **Person or group of persons.** The State Board of Health rules governing isolation and quarantine apply to a person or group of persons. See generally *Id.*

**B. Types of Detention.**

**1. Emergency detention.**

- a. **Basis for local health officer to initiate.** The local health officer may initiate involuntary detention for purposes of isolation or quarantine when he or she:
  - i. Has made reasonable efforts to gain voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, and inspection and closure of facilities, or has determined that seeking voluntary compliance would create a risk of serious harm; and
  - ii. Has reason to believe that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or chemical, biological, or radiological agent that could spread to or contaminate others if remedial action is not taken; and
  - iii. Has reason to believe that the person or group of persons would pose a serious and imminent risk to the health and safety of others if not detained for purposes of isolation or quarantine. [WAC 246-100-040\(1\)](#).
- b. **Alternative procedures for emergency detention.** The local health officer may:
  - i. Issue an emergency detention order; or
  - ii. Petition the superior court *ex parte* for an order. *Id.*
- c. **Local health officer emergency detention order.**
  - i. **Requirements for notice.** See [WAC 246-100-040\(3\)](#).  
(A) Sample Emergency Detention Order is included *infra* [§ 5.33](#).
  - ii. **Enforcement of local health officer orders.**  
(A) **Distribution of written order.** The local health officer shall issue a written emergency detention order as soon as reasonably possible and in all cases within twelve hours of detention. [WAC 246-100-040\(3\)\(b\)](#). The local health officer shall provide copies of the written order to the person or group, or if it is impractical to provide individual copies, post copies in

a conspicuous place in the premises where isolation or quarantine has been imposed. [WAC 246-100-040\(3\)\(c\)](#).

- (B) **Existence of statutory provision for enforcement.** An order issued by a local health officer in accordance with [chapter 246-100 WAC](#) shall constitute the duly authorized application of lawful rules adopted by the State Board of Health and must be enforced by all police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department in accordance with [RCW 43.20.050](#). [WAC 246-100-070\(1\)](#).

- (C) **No explicit authority for arrest by law enforcement.** Generally, police officers may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer. [RCW 10.31.100](#). However, the offense does not have to be in the presence of the officer if (s)he has probable cause to believe that the person has committed or is committing a misdemeanor or gross misdemeanor involving physical harm or threats of harm to any person or property. [RCW 10.31.100\(1\)](#).

**NOTE:** It is not clear whether this provision would apply to enforcement of an emergency detention order issued by a local health officer.

d. **Court proceedings for emergency detention.**

- i. **Petition ex parte.** The local health officer may petition the superior court *ex parte* for an order authorizing involuntary detention of a person or group of persons. [WAC 246-100-040\(3\), \(4\)](#). The petition shall specify:
- (A) The identity of all persons or groups to be subject to isolation or quarantine;
  - (B) The premises where isolation or quarantine will take place;
  - (C) The date and time at which isolation or quarantine will commence;
  - (D) The suspected communicable disease or infectious agent if known;
  - (E) The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious disease if known;
  - (F) The measures taken by the local health officer to seek voluntary compliance or the basis on which the local health officer determined that seeking voluntary compliance would create a risk of serious harm;
  - (G) The medical basis on which isolation or quarantine is justified. [WAC 246-100-040\(4\)\(a\)](#).
- ii. **Declaration of local health officer.** The petition shall be accompanied by the declaration of the local health officer attesting to the facts asserted in the petition, with any further information that may be relevant to the court's consideration. [WAC 246-100-040\(4\)\(b\)](#).

- iii. **Notice.** Notice to the person or groups identified in the petition shall be accomplished in accordance with the rules of civil procedure. [WAC 246-100-040\(4\)\(c\)](#).
- iv. **Hearing.** The court shall hold a hearing on a petition for emergency detention within seventy-two (72) hours of filing, exclusive of Saturdays, Sundays, and holidays. [WAC 246-100-040\(4\)\(d\)](#).
- v. **When court order proper.** The court shall issue the order if there is a reasonable basis to find that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others. [WAC 246-100-040\(4\)\(e\)](#).
- vi. **Court order.** A court order authorizing isolation or quarantine as a result of an *ex parte* hearing shall:
  - (A) Specify a maximum duration for isolation or quarantine not to exceed ten (10) days;
  - (B) Identify the isolated or quarantined persons or groups by name or shared or similar characteristics or circumstances;
  - (C) Specify factual findings warranting isolation or quarantine;
  - (D) Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of [WAC 246-100-040](#);
  - (E) Specify the premises where isolation or quarantine will take place. [WAC 246-100-040\(4\)\(f\)\(i\)](#) to [\(v\)](#).
- vii. **Service of order.** The court order shall be served on all affected persons or groups in accordance with the rules of civil procedure. [WAC 246-100-040\(4\)\(f\)\(vi\)](#).

## 2. Continued detention.

- a. **Applies when necessary to continue detention of a person or group already detained under an emergency detention order.** The local health officer may petition the superior court for an order authorizing continued isolation or quarantine of a person or group detained under [WAC 246-100-040\(3\)](#) or [\(4\)](#). [WAC 246-100-040\(5\)](#).
  - i. **Must be ordered by the superior court.** A local health officer may not order continued detention. See *Id.*
- b. **Proceedings for continued detention.**
  - i. **Petition.** The local health officer's petition to the superior court for an order authorizing continued detention shall specify:
    - (A) The identity of all persons or groups subject to isolation or quarantine;
    - (B) The premises where isolation or quarantine is taking place;
    - (C) The communicable disease or infectious agent if known;
    - (D) The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious disease if known;
    - (E) The medical basis on which continued isolation or quarantine is justified. [WAC 246-100-040\(5\)\(a\)](#).
  - ii. **Declaration of local health officer.** The petition shall be accompanied by the declaration of the local health officer attesting to the facts asserted in the petition, with any further information

that may be relevant to the court's consideration. [WAC 246-100-040\(5\)\(b\)](#).

- iii. **Statement of compliance with conditions and principles.** The petition shall be accompanied by a statement of compliance with the conditions and principles contained in [WAC 246-100-045](#). [WAC 246-100-040\(5\)\(c\)](#). See also *infra* [§ 5.32](#).
- iv. **Notice.** Notice to the persons or groups identified in the petition shall be accomplished in accordance with the rules of civil procedure. [WAC 246-100-040\(5\)\(d\)](#).
- v. **Hearing.** The court shall hold a hearing on a petition for continued detention within seventy-two (72) hours of filing, exclusive of Saturdays, Sundays, and holidays. [WAC 246-100-040\(5\)\(e\)](#).
  - (A) **Local health officer may apply to continue hearing in extraordinary circumstances.** In extraordinary circumstances and for good cause shown, the local health officer may apply to continue the hearing date for up to ten (10) days. *Id.*
    - (1) **Court may grant continuance at its discretion.** The court may grant the continuance at its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the public health threat, and the availability of necessary witnesses and evidence. *Id.*
- vi. **When court order proper.** The court shall grant the petition if it finds that there is clear, cogent, and convincing evidence that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others. [WAC 246-100-040\(5\)\(f\)](#).
- vii. **Court order.** A court order authorizing continued isolation or quarantine as a result of a hearing shall:
  - (A) Specify a maximum duration for isolation or quarantine not to exceed thirty (30) days;
  - (B) Identify the isolated or quarantined persons or groups by name or shared or similar characteristics or circumstances;
  - (C) Specify factual findings warranting isolation or quarantine;
  - (D) Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of [WAC 246-100-040](#);
  - (E) Specify the premises where isolation or quarantine will take place. [WAC 246-100-040\(5\)\(g\)\(i\)](#) to [\(v\)](#).
- viii. **Service of order.** The court order shall be served on all affected persons or groups in accordance with the rules of civil procedure. [WAC 246-100-040\(5\)\(g\)\(vi\)](#).

3. **Additional period of continued detention.**

- a. **Local health officer may petition to continue isolation or quarantine.** Prior to the expiration of a court order issued pursuant to [WAC 246-100-040\(5\)](#), the local health officer may petition the superior court to continue isolation or quarantine. [WAC 246-100-040\(6\)](#). See *supra* [§ 5.31.B.2.b](#).

- b. **When court order proper.** Isolation or quarantine may be continued when the court finds that there is a reasonable basis to require continued isolation or quarantine to prevent a serious and imminent risk to the health and safety of others. [WAC 246-100-040\(6\)\(a\)](#).
  - c. **Period not to exceed thirty (30) days.** The order shall be for a continued period not to exceed thirty (30) days. [WAC 246-100-040\(6\)\(b\)](#).
4. **Authority superseded in certain situations.** The provisions of [WAC 246-100-040](#) shall be superseded by state statutes and rules, and state and federal emergency declarations that contain:
- a. Procedures for detention, examination, counseling, testing, treatment, vaccination, isolation, or quarantine for:
    - i. Specified health emergencies; or
    - ii. Specified communicable diseases, including, but not limited to, tuberculosis and HIV. [WAC 246-100-040\(7\)](#).

**C. *Right to Counsel.***

- 1. **Right to be represented by counsel.** A person or group of persons isolated or quarantined pursuant to [WAC 246-100-040](#) has a right to be represented by counsel if they so elect. [WAC 246-100-060](#).
  - a. **Court appointed counsel.** If a person or group requests counsel and cannot afford counsel, the court shall appoint counsel consistent with the provisions of chapter [10.101 RCW](#). *Id.*
  - b. **Local health officer to provide means of communication.** The local health officer must provide adequate means of communication between persons or groups and their counsel. *Id.*

**D. *Relief from Isolation or Quarantine.***

- 1. **Availability of hearings.** A person or group of persons may seek relief from the superior court for:
  - a. **Detention by the local health officer.** A person or group of persons detained by order of the local health officer pursuant to [WAC 246-100-040\(3\)](#) may apply to the court for an order to show cause why the individual or group should not be released. [WAC 246-100-055\(1\)](#).
    - i. **Ruling on application to show cause.** The court shall rule on the application to show cause within forty-eight (48) hours of its filing. [WAC 246-100-055\(1\)\(a\)](#).
    - ii. **Hearing on order to show cause.** If the court grants the application, the court shall schedule a hearing on the order to show cause as soon as practicable. [WAC 246-100-055\(1\)\(b\)](#).
    - iii. **Isolation or quarantine order not stayed or enjoined.** The issuance of an order to show cause shall not stay or enjoin an isolation or quarantine order. [WAC 246-100-055\(1\)\(c\)](#).
  - b. **Remedies regarding breach of conditions.** A person or group isolated or quarantined may request a hearing for remedies regarding breaches to the conditions required by [WAC 246-100-045](#). [WAC 246-100-055\(2\)](#).

2. **Isolation or quarantine order not stayed or enjoined.** A request for a hearing shall not stay or enjoin an isolation or quarantine order. [WAC 246-100-055\(3\)](#).
3. **Timing of hearing.**
  - a. **In extraordinary circumstances.** Upon receipt of a request alleging extraordinary circumstances justifying the immediate granting of relief, the court shall fix a date for a hearing as soon as practicable. [WAC 246-100-055\(4\)](#).
  - b. **Otherwise.** Upon receipt of a request, the court shall fix a date for a hearing within five (5) days from receipt of the request. [WAC 246-100-055\(5\)](#).
  - c. **Local health authority may apply to continue hearing in extraordinary circumstances.** In extraordinary circumstances and for good cause shown, the local health authority may move the court to extend the time for a hearing. [WAC 246-100-055\(6\)](#).
    - i. **Court may grant at its discretion.** The court may grant the extension at its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency, and the availability of necessary witnesses and evidence. *Id.*
4. **Infection control procedures.** Any hearings for relief involving a petitioner or petitioners judged to be contagious will be conducted in a manner that utilizes appropriate infection control and minimizes the risk of disease transmission. [WAC 246-100-055\(7\)](#).

**E. Consolidation.**

1. **Court may order consolidation.** In any proceedings brought for isolation or quarantine, the court may order consolidation to promote the fair and efficient operation of justice and having given due regard to the rights of the affected persons, the severity of the threat to the public's health, and the availability of necessary witnesses and evidence. [WAC 246-100-065](#).
2. **Criteria for consolidation.** The court may order the consolidation of individual claims into group claims where:
  - a. The number of individuals involved or to be affected is so large as to render individual participation impractical;
  - b. There are questions of law or fact common to the individual claims or rights to be determined;
  - c. The group claims or rights to be determined are typical of the affected persons' claims or rights, and
  - d. The entire group will be adequately represented in the consolidation. *Id.*

**F. Consular Notification for Non-U.S. Citizens.** Article 36(1)(b) of the Vienna Convention on Consular Relations provides that a non-U.S. citizen who is arrested or detained must be informed that consular officials of his or her country may be notified about the detention. If the detainee "so requests," the consular officials must be notified of the detention. Article 36(1)(c) provides

for access to detainees by consular officials. In addition, some bilateral consular agreements require notification. Detailed information is available at: [http://travel.state.gov/law/consular/consular\\_753.html](http://travel.state.gov/law/consular/consular_753.html).

## 5.32 Isolation and Quarantine Conditions and Principles

- A. *Conditions and Principles.*** The local health officer shall adhere to the following conditions and principles when isolating or quarantining a person or group of persons:
1. **Least restrictive means necessary.** Isolation or quarantine must be by the least restrictive means necessary to prevent the spread of a disease to others and may include, but are not limited to, confinement to private homes or other public or private premises. [WAC 246-100-045\(1\)](#).
  2. **Separation of isolated individuals from quarantined individuals.** Isolated persons must be confined separately from quarantined persons. [WAC 246-100-045\(2\)](#).
  3. **Monitoring of health status.** The health status of isolated or quarantined individuals must be monitored regularly to determine if they require continued isolation or quarantine. [WAC 246-100-045\(3\)](#).
  4. **Placement into isolation of quarantined individuals who become infected.** If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable disease that threatens other quarantined individuals, he or she must be placed in isolation. [WAC 246-100-045\(4\)](#).
  5. **Release as soon as practicable.** Isolated or quarantined individuals must be released as soon as practicable when the local health officer determines that they pose no substantial risk of constituting a serious and imminent threat to others. [WAC 246-100-045\(5\)](#).
  6. **Addressing of needs of isolated or quarantined individuals.** The needs of a person isolated or quarantined must be addressed to the greatest extent possible in a systematic and competent fashion, including but not limited to food, clothing, shelter, means of communication with persons in isolation or quarantine and outside these settings, medication, and competent medical care. [WAC 246-100-045\(6\)](#).
  7. **Maintenance of premises used for isolation or quarantine.** Premises used for isolation or quarantine must be maintained in a safe and hygienic manner to minimize the likelihood of further transmission of infection or other harm to persons isolated or quarantined. [WAC 246-100-045\(7\)](#).
  8. **Addressing of cultural and religious beliefs.** To the greatest extent possible, cultural and religious beliefs should be considered in addressing the needs of individuals and establishing and maintaining isolation or quarantine premises. [WAC 246-100-045\(8\)](#).
  9. **Right of persons to rely exclusively on spiritual means to treat a disease.**
    - a. **Right not abridged by isolation or quarantine.** Isolation or quarantine shall not abridge the right of a person to rely exclusively on spiritual means to treat a communicable disease in accordance with religious tenets and practices. [WAC 246-100-045\(9\)](#).

i. **Persons declining treatment may be isolated or quarantined.**

At his or her sole discretion, the local health officer may isolate infected individuals declining treatment for the duration of their communicable infection. *Id.*

b. **Person may choose private place for isolation or quarantine if approved by local health officer.**

A person relying on spiritual means to treat a disease is not prohibited from being isolated or quarantined in a private place of his or her choice provided it is approved by the local health officer. *Id.*

**B. Isolation or quarantine premises.** Entry into isolation or quarantine premises shall be restricted under the following conditions:

1. **Entry may be authorized by the local health officer.** The local health officer may authorize physicians, health care workers, and others access to individuals in isolation or quarantine as necessary to meet the needs of isolation or quarantined individuals. [WAC 246-100-050\(1\)\(a\)](#).

a. **Person not authorized may not enter.** No person, other than a person authorized by the local health officer, shall enter isolation or quarantine premises. [WAC 246-100-050\(1\)\(b\)](#).

b. **Infection control precautions.** Any person entering isolation or quarantine premises shall be provided with infection control training and may be required to wear personal protective equipment or receive vaccination. [WAC 246-100-050\(1\)\(c\)](#).

c. **Persons entering premises may be isolated or quarantined.** Any person entering isolation or quarantine premises with or without the authorization of the local health officer may be isolated or quarantined. [WAC 246-100-050\(1\)\(d\)](#).

2. **Applicability of rules of State Board of Health and orders of local health officer.** Persons subject to isolation or quarantine and persons entering isolation or quarantine premises shall obey rules of the State Board of Health and orders of the local health officer. [WAC 246-100-050\(2\)](#).

a. **Penalties.** Failure to do so shall constitute a misdemeanor consistent with the provisions of [RCW 43.20.050\(4\)](#) and [70.05.120](#). *Id.*

5.33 Sample Local Health Officer Emergency Detention Order

## EMERGENCY DETENTION ORDER

\_\_\_\_\_, you are hereby ordered to detention at  
(name of individual or group)

\_\_\_\_\_ pursuant to WAC 246-100-040.  
(premises subject to isolation or quarantine)

Your isolation or quarantine commences on \_\_\_\_\_ and \_\_\_\_\_.  
(date) (time)

This order will remain in effect until \_\_\_\_\_ and \_\_\_\_\_  
(date) (time)

unless otherwise rescinded, but not to exceed 10 days.

Suspected Communicable Disease or Infectious Agent if Known:

\_\_\_\_\_  
\_\_\_\_\_

Measures taken by the Local Health Officer to seek voluntary compliance OR basis on which Local Health Officer determined that seeking voluntary compliance would create risk of serious harm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Medical basis on which decision to isolate or quarantine is justified:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Special Instructions:

Failure to comply with this Emergency Detention Order is a misdemeanor pursuant to [RCW 70.05.120](#).

It is very important for the protection of your own health and that of others that you abide by this Emergency Detention Order. If you have any questions about this order or need assistance in complying, please call \_\_\_\_\_.

If isolation or quarantine is necessary beyond the ten-day period allowed under this order, the Health Officer may petition the Superior Court for an order authorizing continued isolation or quarantine for a period up to 30 days.

\_\_\_\_\_  
Director and Health Officer

\_\_\_\_\_  
Disease Control Officer

-----  
**IMPORTANT NOTICE:**

You have the right to petition the Superior Court for release from isolation or quarantine in accordance with WAC 246-100-055. You have a right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you

currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

## 5.34 Federal Authority

### A. **Federal Authority to Control Communicable Disease.**

1. **International and interstate transmission.** The Secretary of the U.S. Department of Health and Human Services is authorized to make and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases:
  - a. From foreign countries into the United States or possessions; or
  - b. From one state or possession into another state or possession. 42 U.S.C. § 264(a).
2. **Detention for quarantinable diseases.** Regulations may provide for the apprehension, detention, or conditional release of individuals only for the purpose of preventing the introduction, transmission, or spread of communicable diseases specified in Executive Orders of the President, upon the recommendation of the Secretary of the U.S. Department of Health and Human Services. 42 U.S.C. § 264(b).
3. **Persons moving interstate.**
  - a. **Apprehension and examination.** Regulations may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a qualifying stage and also believed:
    - i. To be moving or about to move from a state to another state; or
    - ii. To be a probable source of infection to individuals who, while infected, will be moving from a state to another state. 42 U.S.C. § 264(d)(1).
  - b. **Detention.** Regulations may provide that an individual who is infected may be detained as reasonably necessary. *Id.*
  - c. **Qualifying stage.** "Qualifying stage" means that a communicable disease is:
    - i. In a communicable stage; or
    - ii. In a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals. 42 U.S.C. § 264(d)(2).
4. **Federal-state cooperation.**
  - a. The Secretary of the U.S. Department of Health and Human Services is authorized to accept from state and local authorities any assistance in the enforcement of federal quarantine regulations that such authorities may be able and willing to provide. 42 U.S.C. § 243(a).
  - b. The Secretary of the U.S. Department of Health and Human Services shall assist states and their political subdivisions in the prevention and suppression of communicable diseases and cooperate with and aid states and local authorities in the enforcement of their quarantine and other health regulations. *Id.*

5. **No preemption unless in the event of a conflict.** Nothing under 42 U.S.C. § 264 nor in regulations promulgated under this authority may be construed as superseding any provision under state law (including regulations and including provisions established by political subdivisions of states) except to the extent that such a provision conflicts with an exercise of federal authority under § 264. 42 U.S.C. § 264(e).

**B. *Disease Transmission from Foreign Countries.***

1. **Ship and aircraft notice of communicable disease.** Ship captains and airline pilots are required to notify the federal quarantine station at or nearest the port or airport of any illness or death on board. [42 C.F.R. § 71.21.](#)
2. **Control measures at United States ports.**
  - a. Whenever the Director of the Centers for Disease Control has reason to believe that any arriving person is infected with or has been exposed to any of the communicable diseases listed in an Executive Order, he or she may:
    - i. Isolate;
    - ii. Quarantine; or
    - iii. Place the person under surveillance. [42 C.F.R. § 71.32.](#) See also [42 C.F.R. § 71.33.](#)
  - b. **Diseases specified in Executive Orders of the President.** Persons with the following diseases are subject to federal quarantine: Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named); Severe Acute Respiratory Syndrome (SARS); and Influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic. Exec. Order No. 13295, 68 Fed. Reg. 17255 (April 4, 2003), as amended by Exec. Order No. 13375, 70 Fed. Reg. 17299 (April 1, 2005).
3. **Application to aliens.** Aliens arriving at a port of the United States are subject to the applicable provisions of [42 C.F.R. pt. 71](#) with respect to examination and quarantine measures. [42 C.F.R. § 34.6.](#)
  - a. **Additional requirements of Immigration and Nationality Act.** Under the Immigration and Nationality Act, aliens may be inadmissible based on health-related grounds. See 8 U.S.C. 1182(a)(1); [42 C.F.R. pt. 34.](#)

**C. *Interstate Disease Transmission.***

1. **Report of disease.** The master of any vessel or person in charge of any conveyance engaged in interstate traffic, on which a case or suspected case of communicable disease develops, shall notify the local health authority at the next port of call and take such measures as the local health authority directs. [42 C.F.R. § 70.4.](#)

2. **Measures in the event of inadequate local control.** If the Director of the Centers for Disease Control determines that a state's measures are insufficient to prevent the spread of any communicable disease from a state or possession to another state or possession, he or she may take measures as he or she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection. [42 C.F.R. § 70.2](#).
  - a. The Commissioner of the Food and Drug Administration has similar authority. [21 C.F.R. § 1240.30](#).
3. **Travel restrictions for certain diseases.** Specific travel restrictions apply to persons in the communicable period or incubation period of cholera, plague, smallpox, typhus, or yellow fever. See [42 C.F.R. § 70.5](#).
4. **Apprehension and detention for certain diseases.** Individuals are subject to detention, isolation, quarantine, or conditional release for the purpose of preventing the introduction, transmission, and spread of the communicable diseases listed in an Executive Order setting out quarantinable diseases. [42 C.F.R. § 70.6](#); *supra* [5.34.B.2](#).

**NOTE:** The Centers for Disease Control has proposed new regulations to replace those currently governing foreign and interstate disease transmission. Control of Communicable Diseases; Proposed Rule, 70 Fed. Reg. 71892 (Nov. 30, 2005).

#### 5.35 Summary of State and Federal Authority for Isolation and Quarantine

	State	Federal
<b>Diseases to which isolation/quarantine applies</b>	A communicable disease or chemical, biological, or radiological agent that would pose a "serious and imminent risk." <a href="#">WAC 246-100-040(1)</a> ; <i>supra</i> <a href="#">§ 5.31.B.1.a</a> .	Diseases specified in Executive Order of the President. 42 U.S.C. § 264(b); <i>supra</i> <a href="#">§ 5.34.A.2</a> .
<b>Persons who may be placed into isolation/quarantine</b>	Persons within the county or district that is served by the local health department. See <a href="#">RCW 70.05.010(1)</a> , <i>supra</i> <a href="#">§ 3.41.B.1</a> .	1) Persons arriving at U.S. ports from foreign countries or possessions of the U.S. <a href="#">42 C.F.R. pt. 71</a> ; <i>supra</i> <a href="#">§ 5.34.B. (2)</a> Persons in interstate travel. <a href="#">42 C.F.R. pt. 70</a> ; <i>supra</i> <a href="#">§ 5.34.C</a> .
<b>Person authorized to initiate isolation/quarantine</b>	Local health officer. <a href="#">WAC 246-100-040(1)</a> ; <i>supra</i> <a href="#">§ 5.31.B.1</a> .	Director, Centers for Disease Control. <a href="#">42 C.F.R. § 71.32</a> ; <i>supra</i> <a href="#">§ 5.34.B.2</a> .
<b>Length of detention</b>	(1) Emergency detention by order of local health officer or <i>ex parte</i> court order: 10 days. <a href="#">WAC 246-100-040(3)</a> , <a href="#">(4)</a> ; <i>supra</i> <a href="#">§ 5.31.B.1</a> . (2) Continued detention by court order: 30 days. <a href="#">WAC 246-100-040(5)</a> ; <i>supra</i> <a href="#">§ 5.31.B.2</a> .	Not specified.

## 5.40 ANIMAL HEALTH

### 5.41 Washington State Department of Agriculture

#### A. ***Authority to Control Animal Disease.***

1. **Director of Agriculture.** The state Director of Agriculture ("Director") shall supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state. [RCW 16.36.010](#).
2. **State Veterinarian.** The state veterinarian shall exercise all the powers and perform all duties prescribed by law relating to diseases among animals and the quarantine and destruction of diseased animals. [RCW 43.23.070](#).
3. **Distinguished from Washington Department of Fish and Wildlife.** With narrow exceptions, "animal" does not mean noncaptive wildlife. See [RCW 16.36.005](#). The Washington Department of Fish and Wildlife operates programs for wild bird disease surveillance. See, e.g., Washington Department of Fish and Wildlife, Fact Sheet, Avian influenza (June 2006).
4. **Applicable Laws and Rules.**
  - a. [Chapter 16.36 RCW](#) – Animal Health Act
  - b. [Chapter 16.38 RCW](#) – Diagnostic Service Program Act
  - c. [Chapter 16.68 RCW](#) – Disposal of Dead Animals Act
  - d. [Chapter 16.70 RCW](#) – Control of Pet Animals Infected with Diseases Communicable to Humans Act
  - e. [Chapter 16-08 WAC](#) – WSDA Practice and Procedure
  - f. [Chapter 16-54 WAC](#) – Animal Importation
  - g. [Chapter 16-59 WAC](#) – Importation of Poultry
  - h. [Chapter 16-70 WAC](#) – Animal Disease Reporting
  - i. [Chapter 16-74 WAC](#) – Livestock Testing
  - j. [Title 16](#) of the Washington Administrative Code also contains various chapters related to specific animal diseases.

#### B. ***Animal Disease Reporting and Investigation.***

1. **Reportable diseases.** See [chapter 16-70 WAC](#).
2. **Persons required to report.** Any person licensed to practice veterinary medicine, surgery, and dentistry in this state, veterinary laboratories, and persons using their own diagnostic services shall immediately report the existence or suspected existence of any reportable disease among animals within the state. [RCW 16.36.080\(1\)](#), [\(2\)](#).
3. **Investigation.** The Director shall investigate and/or maintain records. [RCW 16.36.080\(3\)](#).

**C. Search Warrant.**

1. **Authority to enter.** The Director has the authority to enter the animal premises of any animal owner at any reasonable time to conduct tests, examinations, or inspections for disease conditions when there is reasonable cause to investigate whether animals on the premises or that have been on the premises are infected with or have been exposed to a reportable disease. [RCW 16.36.060\(1\)](#).
  - a. **Seizure of items.** When the Director has determined that there is probable cause that there is a serious risk from disease or contamination, the Director may seize those items necessary to conduct the tests, inspections, or examinations. *Id.*
2. **Application for search warrant.** If the Director is denied access to the animal premises or the animals for purposes of conducting tests, inspections, or examinations or the animal owner fails to comply with an order of the Director, the Director may apply to a court of competent jurisdiction for a search warrant. [RCW 16.36.060\(2\)](#).
  - a. **Probable cause.** The warrant shall be issued upon probable cause. It is sufficient probable cause to show a potential threat to the agricultural interests of this state or a potential threat which seriously endangers animals, human health, the environment, or public welfare. *Id.*
  - b. **Showing that access is denied.** To show that access is denied, the Director shall file with the court an affidavit or declaration containing a description of all attempts to notify and locate the owner or the owner's agent and to secure consent. *Id.*

**D. Animal Quarantine, Hold, Treatment and Destruction.**

1. **Quarantine.**
  - a. **Definition.** "Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering into this state, as may be directed in an order by the Director. [RCW 16.36.005](#).
    - i. "Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals. *Id.*
  - b. **Basis for quarantine.** The Director may issue a quarantine order and enforce the quarantine of any animal or its reproductive products when:
    - i. Any animal or its reproductive products are affected with or have been exposed to disease; or
    - ii. Reasonable cause exists to investigate whether any animal or its reproductive products are affected with or have been exposed to disease, either within or outside the state, even if overt disease or exposure to disease is not immediately obvious. [RCW 16.36.010\(2\)](#).
  - c. **Duration.** The quarantine shall remain in effect as long as the Director deems necessary. *Id.*

2. **Hold order.**
  - a. **Definition.** "Hold order" means an order by the Director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a designated holding location pending an investigation of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products. [RCW 16.36.005](#).
  - b. **Basis for issuance.** The Director may issue a hold order when:
    - i. Reasonable cause exists to investigate whether an animal is diseased or has been exposed to disease, even if overt disease or exposure to disease is not immediately obvious;
    - ii. Import health papers, permits, or other transportation documents required by law or rule are not complete or are suspected to be fraudulent; or
    - iii. Further transport of an animal would jeopardize the well-being of the animal or other animals in Washington state. [RCW 16.36.010\(3\)](#).
  - c. **Duration.** A hold order is in effect for seven (7) days and expires at midnight on the seventh day from the date of the hold order. A successive hold order may be issued if the basis for issuance remains.
    - i. **Replacement by quarantine order.** A hold order may be replaced by a quarantine order for the purpose of animal disease control. *Id.*
3. **Conditions applicable during quarantine and hold orders.**
  - a. Any animal or animal reproductive product shall be kept separate and apart from other animals designated in the instructions of the order and shall not be allowed to have anything in common with other animals. [RCW 16.36.010\(4\)](#).
  - b. Expenses of handling and caring for animals or animal reproductive products are the responsibility of the owner. [RCW 16.36.010\(5\)](#).
  - c. The Director has authority over the quarantine or hold area. [RCW 16.36.010\(6\)](#).
  - d. Any animal or animal reproductive product may not be moved, transported, or sold without written approval from the Director. [RCW 16.36.010\(7\)](#).
4. **Treatment or Voluntary Disposal.** The Director may require appropriate treatment of any animal affected with, suspected of being affected with, or that has been exposed to any reportable disease. The owner may dispose of the animal rather than treat the animal. [RCW 16.36.080\(4\)](#).
5. **Order for destruction of animals.**
  - a. **Diseased animals.** When public welfare demands, the Director may order the slaughter or destruction of any animal affected with or exposed to any contagious, infectious, or communicable disease that is affecting or may affect the health of the state's animal population. [RCW 16.36.090](#).

- b. **Quarantined animals.** The Director may order destruction of any animal held under quarantine when public welfare demands or the owner of the animal fails or refuses to follow a herd or flock plan. *Id.*
  - c. **Written order.** The Director shall give a written order directing an animal be destroyed by or under the direction of the state veterinarian. *Id.*
6. **Agency review.**
- a. **Request for hearing.** Any person whose animal or animal reproductive products are placed under a quarantine, a hold order, or destruct order may request a hearing. The request must be in writing and filed with the Director. [RCW 16.36.098](#).
  - b. **Conduct of hearing.** Any hearing will be held in conformance with chapter [34.05.479 RCW](#) (Administrative procedure act - Emergency adjudicative proceedings). *Id.* Rules governing the Department of Agriculture's use of emergency adjudicative proceedings are contained in [WAC 16-08-151](#). (In practice, the Department of Agriculture conducts both regular and emergency proceedings. The proceedings may be consolidated under [WAC 16-08-022](#).)

**E. Enforcement Powers.**

- 1. **Injunction.** The Director may bring an action to enjoin the violation of any provision of chapter [16.36 RCW](#) or any rule adopted under the chapter. The Director may bring the action in the superior court of Thurston County or of the county in which the violation occurs. [RCW 16.36.110\(2\)](#).
- 2. **Petition for enforcement.** The Department of Agriculture may seek enforcement of an order under [RCW 34.05.578](#) (Administrative procedure act - Petition by agency for enforcement).

**F. Criminal Penalties.**

- 1. **Gross misdemeanor.** Any person who violates any provision of [chapter 16.36 RCW](#) or any rule adopted under the chapter is guilty of a gross misdemeanor. [RCW 16.36.110\(1\)](#).

5.42 Washington State Department of Health

- A. Secretary of Health - Pets.** If an emergency arises out of an outbreak of diseases communicable to humans caused by pet animals, the Secretary of Health is authorized to take action deemed necessary to protect the public health, including quarantine or any legal action authorized in [Title 7 RCW](#) and [RCW 43.70.170](#) to [.190](#). See *supra* [§ 3.30.B.3](#). The Secretary is authorized to destroy pet animals reasonably suspected of having a communicable disease dangerous to humans as a public nuisance. [RCW 16.70.030](#).
- 1. **Definition of pet animals.** Pet animals means dogs (Canidae), cats (Felidae), monkeys and other similar primates, turtles, psittacine birds, skunks, or any other species of wild or domestic animals sold or retained for the purpose of being kept as a household pet. [RCW 16.70.020\(1\)](#).

- A. *Importation and Movement in Interstate Commerce.*** The Secretary of the U.S. Department of Agriculture may hold, seize, quarantine, treat, destroy, dispose of, or take other remedial action with respect to any animal or progeny of any animal, article, or means of conveyance that:
1. Is moving or has been moved in interstate commerce or has been imported, and
  2. May carry, may have carried, or may have been affected with or exposed to a pest or disease of livestock or where there has been a violation of federal animal health protection law, regulation, or an import permit. See 7 U.S.C. § 8306(a), (c), (d).
- B. *Measures in the Event of Inadequate Local Control.***
1. If the Secretary of the U.S. Department of Agriculture finds, after review and consultation with a state's governor (or the head of an Indian tribe), that the measures being taken by a state (or a tribe) are inadequate to control or eradicate a pest or disease that threatens the livestock of the United States, he or she may take action necessary to prevent dissemination of the pest or disease including:
    - a. Holding, seizing, treating, applying remedial measures, destroying or otherwise disposing of, any animal, article, facility, or means of conveyance;
    - b. Prohibiting and restricting movement within a state. See 7 U.S.C. § 8306(b), (c), (d).
  2. The Director of the Centers for Disease Control may take measures in the event of inadequate local control to prevent the interstate spread of communicable disease, including pest extermination and destruction of animals or articles believed to be sources of infection. See [42 C.F.R. § 70.2](#); *supra* [§ 5.34.C.2](#).
    - a. The Commissioner of the Food and Drug Administration has similar authority. [21 C.F.R. §1240.30](#).
- C. *Regulation of International Animal Movement.*** The U.S. Department of Agriculture regulates the importation of animals across international borders. The regulations are found at [9 C.F.R. pts. 91-99](#) (importation of animals and animal products). Other regulations include [9 C.F.R. pts. 49-55](#) (control and eradication of livestock diseases), and [9 C.F.R. pts. 70-89](#) (interstate transportation of animals and animal products).
- D. *Regulation of Importation of Animals for Purposes of Disease Control.***
1. The Director of the Centers for Disease Control regulates the importation of certain animals into the United States to prevent the introduction, transmission, or spread of communicable disease in humans. See [42 C.F.R. §§ 71.51 to .54, .56](#).

2. The Director also may take actions necessary when any arriving carrier or article or thing on board is or may be infected with a communicable disease. [42 C.F.R. § 71.32](#). (Under this authority, the Centers for Disease Control has issued emergency orders to respond to specific threats, including importation of bird and bird products from certain countries where avian influenza has been detected in poultry and importation of civets because the animal has been linked to SARS.)

## **6.00      SAMPLE PLEADINGS FOR ISOLATION AND QUARANTINE**

### **6.10      SAMPLE PLEADINGS FOR INVOLUNTARY ISOLATION OR QUARANTINE**

#### **COMMUNICABLE DISEASES (WAC 246-100-040 TO -070) SAMPLE PLEADINGS FOR INVOLUNTARY ISOLATION OR QUARANTINE**

<b>Initial Detention for up to 10 Days</b>
<u>Pleadings for Court Order</u> <ul style="list-style-type: none"><li>• Petition Ex Parte for Involuntary Isolation or Quarantine</li><li>• Declaration of Disease Control Officer in Support of Petition Ex Parte for Involuntary Isolation or Quarantine</li><li>• Statement of Rights of Respondent and Notification of Attorney</li><li>• [Proposed] Order for Involuntary Isolation or Quarantine</li><li>• Summons</li><li>• Declaration of Service</li> <li>• Motion for Order to Seal Records</li><li>• Sealed Data</li><li>• [Proposed] Order to Seal Records</li> <li>• Motion and Order for Bench Warrant (if needed)</li></ul>
<b>Continued Isolation or Quarantine for up to 30 Days</b>
<u>Pleadings for Court Order</u> <ul style="list-style-type: none"><li>• Petition for Continued Isolation or Quarantine</li><li>• Declaration of Disease Control Officer in Support of Petition for Continued Isolation or Quarantine</li><li>• Declaration of Compliance with WAC 246-100-045</li><li>• [Proposed] Order for Continued Isolation or Quarantine</li></ul>
<b>Continued Isolation or Quarantine for up to an Additional 30 Days</b>
<u>Pleadings for Court Order</u> <p>(Same forms as 30-day period above, updated to reflect current facts)</p>

**NOTE:** Appendix A contains an example of a Declaration of Disease Control Officer for a hypothetical tuberculosis case. Although tuberculosis is governed by separate statutes and rules, the example illustrates a fact pattern that could arise in communicable disease control.

6.11 Sample Petition Ex-Parte for Involuntary Isolation or Quarantine

COMES NOW the Seattle-King County Department of Public Health, by and through its attorney(s) of record, and requests the Court for an Order directing and authorizing the isolation and/or quarantine of Respondent(s) (identified on Sealed Data, filed with the Court) pursuant to WAC 246-100-040.

1. JURISDICTION: This Petition is requested pursuant to the provisions of RCW 70.05.070, RCW 43.70.190, and WAC 246-100-040(4). This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 43.70.190.

2. WAC 246-100-040(4) provides that the local health officer may petition the superior court ex-parte for an order authorizing the involuntary detention of a person or group of persons for purposes of isolation or quarantine.

3. Isolation and/or quarantine is necessary for the reasons set forth in the Declaration of Disease Control Officer (attached), which attests to the facts asserted in this petition, together with any further information that may be relevant to the Court's consideration.

4. The local health officer has made reasonable efforts to obtain voluntary compliance with requests for medical examination, testing, treatment, vaccination, decontamination of persons or animals, isolation, or quarantine, or has determined in his/her professional judgment that seeking voluntary compliance would create a risk of serious harm.

5. The local health officer has reason to believe that Respondent(s) is, or is suspected to be, infected with, exposed to or contaminated with \_\_\_\_\_, which could infect or contaminate others if Respondent(s) is not detained and quarantined or isolated from others.

6. The local health officer has reason to believe that Respondent(s) would pose a serious and imminent risk to the health and safety of others if not detained for isolation and quarantine.

7. Petitioner offers the following information for the consideration of the Court:

A. The identity of all persons or groups to be subject to the isolation or quarantine: See Sealed Data, filed with the Court.

B. The premises where isolation and quarantine will take place: See Sealed Data, filed with the Court.

C. The date and time at which isolation or quarantine will commence:

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D. The suspected communicable disease or infectious agent, if known:

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E. The anticipated duration of isolation and quarantine based on the suspected communicable disease or infectious agent, if known:

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F. The measures taken by the local health officer to seek voluntary compliance or the basis on which the local health officer determined that seeking voluntary compliance would create a risk of serious harm:

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G. The medical basis on which isolation and quarantine is justified:

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8. IT IS SPECIFICALLY REQUESTED HEREIN that the Court direct Respondent(s)

(see Sealed Data, filed with the Court) be isolated and/or quarantined at (see Sealed Data, filed with the Court) and be directed to remain in such isolation and/or quarantine until \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) (not to exceed ten days).

9. ☐ (Check if applicable.) IT IS FURTHER SPECIFICALLY REQUESTED HEREIN that the Court order the Clerk of the Court to issue a bench warrant for the arrest of Respondent(s). (See Motion and Order for Bench Warrant, filed with the Court.)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

6.12      Sample Declaration of Disease Control Officer in Support of Petition Ex-Parte for Involuntary Isolation and Quarantine

I, \_\_\_\_\_, declare as follows:

1.      I am over the age of eighteen and make this declaration based upon my own personal knowledge.
2.      I am a licensed physician in the State of Washington, and a Disease Control Officer for the Seattle-King County Department of Public Health.
3.      My duties include investigation of reportable diseases, disease outbreaks, and other illnesses affecting the population, assessment of the nature and extent of health risks, and responsibility for implementing disease control and prevention measures.
4.      ☐ (Check if applicable.) Attached as Exhibit 1 is a true and accurate copy of an emergency detention order issued to Respondent(s) pursuant to WAC 246-100-040(3).
5.      It is my medical judgment that the involuntary detention of Respondent(s) is necessary to prevent a serious or imminent risk to the health and safety of others. I reached that conclusion based on the following information:  
  
         ☐ (Check if applicable.) I took the following measures to seek voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation,

quarantine, or inspection and closure of facilities, and Respondent(s) has not complied or refused to comply as evidenced by:

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OR

☐ (Check if applicable.) In my professional judgment, seeking voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, or inspection and closure of facilities would create a risk of serious harm because:

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6. In addition I offer the following information for the consideration of the Court:

A. The identity of all persons or groups to be subject to the isolation or quarantine:

See Sealed Data, filed with the Court.

B. The premises where isolation or quarantine will take place: See Sealed Data, filed with the Court.

C. The suspected communicable disease or infectious agent, if known:

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D. The date and time isolation or quarantine commenced or will commence:

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E. The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious agent, if known:

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F. The medical basis on which involuntary isolation or quarantine is justified and the consequences of not imposing isolation or quarantine:

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I declare under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ at \_\_\_\_\_, Washington.

By: \_\_\_\_\_  
Signature

Dr. \_\_\_\_\_  
Printed Name

#### 6.13 Sample Statement of Rights of Respondent and Notification of Attorney

TO: RESPONDENT(S)

#### NOTICE OF RIGHTS

You have the right to a Superior Court hearing within seventy-two (72) hours of detention, excluding holidays and weekends. You have the right to legal counsel. If you

are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

\_\_\_\_\_ (name of defense attorney) of the  
\_\_\_\_\_ (name of defense agency) at  
\_\_\_\_\_ (telephone number of defense attorney)  
**is your assigned attorney at this time.**

You have the right to contest the facts alleged against you, to cross-examine witnesses, and to present evidence and witnesses on your behalf.

You have the right to appeal any decision made by the court.

Notice of Rights served on Respondent(s) this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

At \_\_\_\_\_ a.m./p.m. at \_\_\_\_\_, Seattle, WA

by \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

#### 6.14 Sample (Proposed) Order for Involuntary Isolation or Quarantine

THIS MATTER, having come before the undersigned Judge/Court Commissioner of the above-entitled Court pursuant to a Petition Ex-Parte for Involuntary Isolation or Quarantine of Respondent(s), filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Court having reviewed the Petition, the Declaration of Disease Control Officer, the pleadings filed herein, the argument of counsel, and pertinent regulatory provisions associated therewith,

THE COURT NOW, THEREFORE, FINDS:

1. Jurisdiction: This court has jurisdiction over the person and subject matter in this proceeding.
2. There is a reasonable basis to find that isolation and/or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.
3. The facts warranting isolation and quarantine are:

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4. ☐ (Check if applicable.) The Local Health Officer made reasonable efforts to obtain voluntary compliance with less restrictive alternatives, including voluntary isolation or quarantine, but those alternatives were not followed by Respondent(s).

OR

- ☐ (Check if applicable.) The Local Health Officer considered less restrictive alternatives, including voluntary isolation or quarantine, but those alternatives, given the serious and imminent risk to the public health and safety, do not provide sufficient public protection.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent(s) shall be isolated or quarantined in accordance with the ex-parte petition from \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) to \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time), a period that does not exceed ten days, unless the health officer determines, prior to the expiration of that period, that isolation and/or quarantine is no longer necessary.
2. The person(s) to be isolated or quarantined is:

See Sealed Data, filed with the Court.

3. ☐ (Check if applicable.) The following conditions are necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of WAC 246-100-040:

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4. The isolation or quarantine will take place at the following premises:

See Sealed Data, filed with the Court.

5. The Court shall retain jurisdiction of this matter to ensure compliance with its terms, and for purposes of possible further action, including continuation of detention pursuant to WAC 246-100-040.

6. Petitioner shall serve this Order on all Respondent(s), in accordance with the rules of civil procedure.

7. ☐ (Check for ex parte order.) A hearing on this matter shall be held on

\_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time), which is less than 72 hours from the time of filing the petition, excluding Saturdays, Sundays and holidays. The hearing will be held at the following location and with the following special arrangements to ensure protection against spread of a communicable disease or infectious agent:

Judge: \_\_\_\_\_

Location: \_\_\_\_\_

Special Arrangements: \_\_\_\_\_

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8. The Clerk is ordered to accept this Order for filing outside the regular session of the Court. This Order is to be filed as of the date of the signature of the Court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Judge/Court Commissioner

Presented by:

6.15 Sample Declaration of Service

\_\_\_\_\_  
(Printed Name) declares:

1. Identity. I am a \_\_\_\_\_ (job title) employed by \_\_\_\_\_ (employer) and was so employed on \_\_\_\_\_ (date of service);

2. Competency. At all times mentioned herein I was over the age of eighteen years, not a party to the above entitled public health order enforcement proceeding, and competent to be a witness in this proceeding;

3. Service. On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, at \_\_\_\_\_ a.m./p.m., I personally served Respondent(s) with the

☒ SUMMONS

☒ PETITION

☒ DECLARATION OF DISEASE CONTROL OFFICER

☒ STATEMENT OF RIGHTS AND NOTIFICATION OF ATTORNEY, and

☐ (Check if applicable) EX PARTE ORDER

in the above entitled public health order enforcement proceeding by delivering true/certified copies of said documents to said Respondent(s).

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

#### 6.16 Sample Summons

TO THE RESPONDENT(S): A lawsuit has been started against you in the above-entitled court by petitioner, Seattle-King County Department of Public Health. Petitioner's claim is stated in the written petition, a copy of which is served upon you with this summons.

You may be isolated or quarantined immediately if ordered by the court based on a petition ex parte. In order to defend against this lawsuit, you must appear at a hearing to be conducted within 72 hours from the time of filing of the petition, excluding Saturdays, Sundays and holidays. If you do not appear, the court may issue an order authorizing isolation or quarantine not to exceed 10 days.

If you wish to seek the advice of an attorney in this matter, you should do so promptly and in advance of the hearing.

THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington and WAC 246-100-040.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

#### 6.17 Sample Motion and Order for Bench Warrant

The undersigned Deputy Prosecuting Attorney moves the court for an order directing the clerk of the court to issue a bench warrant for Respondent in the above-entitled cause.

This motion is based on the records and files herein. As evidenced by the Declaration of Disease Control Officer, the Local Health Officer has reason to believe that the isolation

or quarantine of Respondent is necessary to prevent a serious and imminent risk to the health and safety of others.

☐ (Check if applicable.) The Local Health Officer has petitioned the court ex parte for an order authorizing involuntary isolation or quarantine pursuant to WAC 246-100-040. It is necessary to assure enforcement of this order with a bench warrant because:

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OR

☐ (Check if applicable). Respondent failed to comply with an ex parte court order for involuntary isolation or quarantine pursuant to WAC 246-100-040(4) or a court order for continued isolation or quarantine pursuant to WAC 246-100-040(5). It is necessary to ensure enforcement of the court order with a bench warrant because:

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Based on the serious and imminent risk to the health and safety of others if Respondent refuses or continues to refuse to comply with the court's order for involuntary isolation or quarantine, as evidenced by the Declaration of Disease Control Officer, the Seattle-King County Department of Public Health requests the issuance of a bench warrant:

☐ To insure compliance with involuntary isolation or quarantine pursuant to the terms of the ex parte court order or court order for continued isolation or quarantine;

AND/OR

[ ] To insure appearance at a hearing scheduled for \_\_\_\_\_ a.m./p.m. on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Respectfully submitted,

ORDER

Good cause having been shown, it is hereby ORDERED that the Clerk of this court issue a bench warrant for the arrest of the above-named Respondent, identified in SEALED DATA filed herein, directing the Director of Public Safety to apprehend the said defendant. Bail on this warrant shall not be allowed.

DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Judge/Court Commissioner

**6.20 SAMPLE PLEADINGS FOR ORDER TO SEAL RECORDS**

**6.21 Sample Motion for Order to Seal Records**

**I. Relief Requested.**

COMES NOW the Seattle-King County Department of Public Health, by and through its attorney(s) of record, and respectfully requests the Court to seal the following record in this proceeding: document entitled Sealed Data.

**II. Statement of Facts.**

The local health officer has filed a petition for involuntary isolation or quarantine pursuant to WAC 246-100-040 because he/she has reason to believe that Respondent(s) is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or chemical, biological, or radiological agent that could spread to or contaminate others if remedial action is not taken. This action thus involves health care information regarding Respondent(s).

**III. Statement of Issues.**

Is sealing of the Sealed Data justified by compelling privacy concerns that outweigh the

public interest in access to the court record?

#### **IV. Evidence Relied Upon.**

This Motion is based upon the records and documents contained in this file.

#### **V. Authority.**

After a hearing on the motion to seal, the court may order court files and records to be sealed if the court makes and enters written findings that the specific sealing or redaction is justified by compelling privacy or safety concerns that outweigh the public interest in access to the court record. GR 15(c). Here compelling circumstances exist that require sealing the Sealed Data; failure to do so would result in the disclosure of protected health care information. Nor would redaction of the Sealed Data suffice to protect the information from disclosure.

The Sealed Data identify Respondent(s) and the place(s) of detention. Disclosure of the identity of Respondent(s) would result in the disclosure of protected health care information. Similarly, disclosure of the place of detention creates a reasonable basis to believe that the information could be used to identify the individual(s). It is not possible to redact the Sealed Data in a way that would protect the identity of Respondent(s).

The Washington legislature has found that: "Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests." RCW 70.02.005(1). Health care providers are generally prohibited from disclosing health care information without the patient's written authorization. Further, the federal Privacy Rule implementing the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191, defines and limits the circumstances in which protected health information may be disclosed. 45 C.F.R. § 164.502(a). Health information generally may be disclosed if it is de-identified so "there is no reasonable basis to believe that the information can be used to identify an individual". 45 C.F.R. § 164.514(a).

Indeed, local health departments are required to establish procedures to ensure the confidentiality of health care information concerning a notifiable condition<sup>1</sup>. WAC 246-101-515(1) provides:

Local health officers or local health departments shall establish and maintain confidentiality procedures related to employee handling of all reports of cases and suspected cases, prohibiting disclosure of report information identifying an individual case or suspected cases except:

(a) To employees of the local health department, or other official agencies needing to know for the purpose of administering public health laws and these regulations;

(b) To health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control....

Sealing of the document entitled Sealed Data is consistent with state law. RCW

70.02.050(1) provides, in part, that a health care provider may disclose health care information if the disclosure is:

(d) To any person if the health care provider... reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, *however, there is no obligation under this chapter on the part of the provider... to so disclose.*

(Emphasis added.) Further, 45 C.F.R. § 164.512(j)(1) permits disclosure of protected health care information if the provider in good faith believes that the use or disclosure:

(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) Is to a person or persons reasonably able to prevent or lessen the threat....

Here, it is necessary to disclose the protected health care information to the Court for the purpose of obtaining an order for the isolation or quarantine, thus minimizing an imminent danger to the health of the patient and other persons.

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<sup>1</sup> “‘Notifiable condition’ means a disease or condition of public health importance, a case of which, and for certain diseases, a suspected case of which, must be brought to the attention of the local health officer or the state health officer.” WAC 246-101-010(30). The notifiable conditions are set forth at WAC 246-101-101.

It is not, however, necessary that the public have access to the identity of the individuals whose health care is the subject of this action in order to avoid or minimize an imminent danger to the health or safety of the patient or other individual. The public already has access to the other records in this case, which discuss the nature of the illness and the justification for isolation or quarantine.

The protection of the identity of the individuals whose health care is the subject of this action is justified by compelling privacy concerns that outweigh the public's interest in access to the record. Accordingly, the Seattle-King County Department of Public Health requests that the document entitled Sealed Data which identifies Respondent(s) and the Location of Detention be sealed, that the Order to Seal Records be effective the date the Order is signed by the Court, and that the document be treated as confidential and not available to persons other than the parties, their counsel of record, the King County Sheriff's Office and other law enforcement personnel if necessary to carry out the terms of any order issued in this case, and other designated individuals as the Court deems appropriate, or as mutually agreed upon by the parties to this action.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

Respectfully submitted,

#### 6.22 Sample Sealed Data Form (Sealed Record)

**[NOTE TO ATTORNEYS:**

**If you determine to move to seal the document(s) that identify respondent(s) and the place of detention, you should consult GR 15 regarding the tests for sealing of records. In addition, you may wish to consult with your Clerk of the Court as to the best procedure to follow in your jurisdiction to seal records.**

**In King County, it is recommended that the document which the party wishes to have sealed be included in the judge's working copies provided pursuant to LR 7(b)(3)(B), but NOT filed with the Clerk, as such filing would result in the information becoming public, even if only temporarily until the judge rules on the**

**motion to seal. The order to seal must, however, be public, and should be drafted accordingly. In King County, it is anticipated that the respondents will be identified in the caption, and in other pleadings only by their initials in order to avoid inadvertent disclosure of health care information.]**

Person(s)

Name	Date of Birth	Address	Identity in Pleadings

Group

Identifying Description	Identity in Pleadings

Location of Detention: \_\_\_\_\_  
 \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

Respectfully submitted,

**NOTICE TO INDIVIDUALS IN RECEIPT OF THIS CONFIDENTIAL DATA:**

**THIS INFORMATION HAS BEEN DISCLOSED TO YOU FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE LAW. STATE LAW PROHIBITS YOU FROM MAKING ANY FURTHER DISCLOSURE OF IT EXCEPT AS AUTHORIZED BY STATE LAW.**

**6.23      Sample (Proposed) Order to Seal Records**

THIS MATTER, having come on for hearing before the undersigned Judge/Court Commissioner, the Court having considered the pleadings and arguments of the parties,

NOW, THEREFORE THE COURT FINDS that:

1. The document entitled Sealed Data identifies Respondent(s) and the place(s) of detention.
2. Disclosure of the identity of Respondent(s) would result in the disclosure of protected health care information, which is protected from disclosure by statute.
3. Disclosure of the place of detention creates a reasonable basis to believe that the information could be used to identify the individual(s), and thus is protected from disclosure by statute.
4. Sealing of the information is thereby permitted by statute.
5. Sealing of the information is justified by compelling privacy concerns that outweigh the public interest in access to information in the Sealed Data.
6. Redaction of the Sealed Data would not suffice to protect the information from disclosure.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Clerk of the Court shall seal the document entitled Sealed Data.
2. The Clerk of the Court is directed to file this Order to Seal Records effective this date, being the date the Order to Seal Records is signed by the Court.
3. Access to the sealed document is limited to the respective parties to this proceeding; their counsel of record; the King County Sheriff's Office, and other law enforcement personnel if necessary to carry out the terms of any order issued in this matter; and such other individuals as the parties to this proceeding may mutually agree, or the Court may designate to be allowed access to the same.
4. Access to the sealed record is available only in the Clerk's Office.

5. In the event of an application for the opening of the sealed document, a hearing shall be noted and notice shall be given or attempted to the following persons in addition to the parties, or their counsel if represented:

\_\_\_\_\_  
\_\_\_\_\_

DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
JUDGE/COURT COMMISSIONER

Presented by:

**6.30 SAMPLE PLEADINGS FOR CONTINUED ISOLATION OR QUARANTINE**

**6.31 Sample Petition for Continued Isolation or Quarantine**

COMES NOW the Seattle-King County Department of Public Health, by and through its attorney(s) of record, and requests the Court for an Order directing and authorizing the continued isolation and/or quarantine of Respondent(s) (identified on Sealed Data, filed with the Court) pursuant to WAC 246-100-040.

1. This Petition is requested pursuant to the provisions of RCW 70.05.070, RCW 43.70.190 and WAC 246-100-040(5). This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 43.70.190.
2. WAC 246-100-040(5) provides that the local health officer may petition the superior court for an order authorizing the continued isolation or quarantine of a person or group detained under WAC 246-100-040(3) or (4).
3. ☐ (Check if applicable). On \_\_\_\_\_, 20\_\_\_\_, the local health officer issued an Emergency Detention Order immediately involuntarily detaining Respondent(s) for isolation or quarantine under the authority of RCW 70.05.070 and WAC 246-100-040(3). The Emergency Detention Order

remains in effect until \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_ o'clock AM/PM  
(Pacific Time) a period that does not exceed ten days.

OR

[ ] (Check if applicable.) The Court issued an Order on \_\_\_\_\_,  
20\_\_\_\_, in this cause, involuntarily detaining Respondent(s) for isolation or  
quarantine under the authority of WAC 246-100-040(4). The Order remains  
in effect until \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM  
(Pacific Time), a period that does not exceed ten days.

4. Continued isolation and/or quarantine is necessary for the reasons set forth in  
the declaration of Disease Control Officer (attached), which attests to the  
facts asserted in this petition, together with any further information that may  
be relevant to the Court's consideration. Petitioner offers the following  
information for the consideration of the Court:

A. The identity of all persons or groups to be subject to the isolation or  
quarantine: See Sealed Data, filed with the Court.

B. The premises where isolation and quarantine will take place: See Sealed  
Data, filed with the Court.

C. The communicable disease or infectious agent, if known:

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D. The anticipated duration of isolation and quarantine based on the suspected  
communicable disease or infectious agent if known:

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E. The medical basis on which continued isolation and quarantine is justified:

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5. In accordance with the requirements of WAC 246-100-040(5)(c), this Petition is accompanied by a declaration of compliance with the conditions and principles for isolation and quarantine set forth at WAC 246-100-045.
6. IT IS SPECIFICALLY REQUESTED HEREIN that the Court direct Respondent(s) (see Sealed Data, filed with the Court) be isolated and/or quarantined at (see Sealed Data, filed with the Court), and be directed to remain in such isolation and/or quarantine until \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) (not to exceed thirty days).
7. ☐ (Check if applicable.) IT IS FURTHER SPECIFICALLY REQUESTED HEREIN that the Court order the Clerk of the Court to issue a bench warrant for the arrest of Respondent(s). (See Motion and Order for Bench Warrant, filed with the Court.)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

Respectfully submitted,

6.32 Sample Declaration of Compliance with WAC 246-100-045

I, \_\_\_\_\_, declare as follows:

1. I am over the age of eighteen and make this declaration based upon my own personal knowledge.
2. I am \_\_\_\_\_ for the Seattle-King County Department of Public Health.
3. My duties include supervising the isolation or quarantine of persons detained pursuant to WAC 246-100-040, including Respondent(s).
4. Isolation or quarantine is by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others. In this case isolation or quarantine is by

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- 
5. Isolated individuals are confined separately from quarantined individuals.
  6. The health status of isolated or quarantined individuals is monitored regularly to determine if they require continued isolation or quarantine.
  7. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease that the local health officer believes poses a significant threat to the health and safety of other quarantined individuals, he or she is promptly placed in isolation.
  8. Isolated or quarantined individuals are released as soon as practicable when the local health officer determines that they have been successfully decontaminated or that they pose no substantial risk of transmitting a communicable or possibly communicable disease that would constitute a serious or imminent threat to the health and safety of others.
  9. The needs of a person isolated or quarantined are addressed to the greatest extent possible in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care.
  10. Premises used for isolation or quarantine are maintained in a safe and hygienic manner to minimize the likelihood of further transmission of infection or other harm to persons isolated and quarantined.
  11. To the extent possible, cultural and religious beliefs are considered in addressing the needs of individuals, and establishing and maintaining isolation or quarantine premises.
  12. Isolation or quarantine does not abridge the right of any person to rely exclusively on spiritual means alone through prayer to treat a communicable or possibly communicable disease in accordance with religious tenets and practices; in addition, a person so relying who is

infected with a contagious or communicable disease is not prohibited from being isolated or quarantined in a private place of his or her own choice, provided, it is approved by the local health officer, and all laws, rules and regulations governing control, sanitation, isolation and quarantine are complied with. At his or her sole discretion, the local health officer may isolate infected individuals declining treatment for the duration of their communicable infection.

I declare under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ at \_\_\_\_\_, Washington.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

#### 6.33 Sample (Proposed) Order for Continued Isolation or Quarantine

THIS MATTER, having come before the undersigned Judge/Court Commissioner of the above-entitled Court pursuant to a Petition for Continued Isolation or Quarantine of Respondent(s), filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Court having held a hearing on the petition within seventy-two (72) hours of filing (exclusive of Saturdays, Sundays, and holidays), and reviewed the Petition, the Declaration of Disease Control Officer, argument and evidence presented at the hearing, and pertinent regulatory provisions associated therewith,  
THE COURT NOW, THEREFORE, FINDS:

1. Jurisdiction: This court has jurisdiction over the person and subject matter in this proceeding.
2. There is clear, cogent, and convincing evidence that isolation and/or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.
3. Notice to the person(s) or group identified in the petition was accomplished in accordance with the rules of civil procedure.
4. The facts warranting continued isolation and quarantine are:

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IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent(s) shall be isolated and/or quarantined in accordance with the Petition from \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) to \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time), a period that does not exceed thirty days, unless the health officer determines, prior to the expiration of that period, that isolation and/or quarantine is no longer necessary.
2. The person(s) or group to be isolated or quarantined is: See Sealed Data, filed with the Court.
3. ☐ (Check if applicable.) The following conditions are necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of WAC 246-100-040:

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4. The isolation or quarantine will take place at the following premises:

See Sealed Data, filed with the Court.

5. The Court shall retain jurisdiction of this matter to ensure compliance with its terms, and for purposes of possible further action, including continuation of detention pursuant to WAC 246-100-040.
6. Petitioner shall serve this Order on all Respondent(s), in accordance with the rules of civil procedure.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

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Judge/Court Commissioner

Presented by:

## **7.00 OPERATION OF THE COURTS AMID PUBLIC HEALTH THREATS**

The conduct of judicial proceedings involving persons infected or suspected of being infected with a communicable disease may require the court to alter some of its standard procedures in order to assure the safety of court personnel and persons participating in the proceedings. For example, the court might consider whether an individual suspected of being infected with a contagious disease should be permitted to physically appear in the court room and, if not, how the proceedings will be conducted to ensure the individual's adequate participation. Additional issues, including the adequacy of the individual's access to and consultation with counsel, might also arise.

In the event of a public health emergency, such as the widespread outbreak of an infectious disease within a community, the challenges facing the courts may increase. Court personnel, including judges and security officers, may themselves become ill. The court may be forced to relocate to safer and more sanitary premises. Each of these scenarios will strain the resources of the courts and require innovative solutions that ensure the continued operation of the judicial system while respecting constitutional due process guarantees.

### **7.10 APPEARANCE OF INDIVIDUALS POSING A POTENTIAL THREAT TO PUBLIC HEALTH**

#### **7.11 Appearance by Means Other Than in Person**

Although isolation and quarantine orders may, under certain circumstances, be issued following *ex parte* hearings, an individual affected by such an order is subsequently entitled to a hearing on the subject. [WAC 246-100-040](#); see also U.S. CONST. amend. V; WASH. CONST. art. 1, § 3 (No person shall be deprived of life, liberty, or property without due process of law.); see also WASH. CONST. art. I, § 10 ("Justice in all cases shall be administered openly, and without unnecessary delay."). However, an individual who is the subject of an isolation or quarantine order may be physically unable to appear in court due to illness or quarantine. Alternatively, the court may be unwilling to permit an infected or potentially infected individual to appear in person because of the health threat such an individual poses to court personnel, counsel, and the attending public. Indeed, [WAC 246-100-055](#), regarding relief from isolation and quarantine, provides that "[a]ny hearings for relief under this section involving a petitioner or petitioners judged to be contagious for a communicable disease will be conducted in a manner that utilizes appropriate infection control precautions and minimizes the risk of disease transmission." [WAC 246-100-055\(7\)](#).

In the event an individual is not able or permitted to attend proceedings in person, the court may wish to consider the following alternative procedures.

- A. *Telephonic Proceedings.*** It is within the discretion of any King County Superior Court judge to issue reasonable orders regarding the manner in which hearings are conducted, and hearings by telephone conference call, or similar means of communication, are permissible. [CR 43\(a\)](#) ("In all trials the

testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute." (Emphasis added.))

- B. Video Conference Proceedings.** In criminal matters, King County trial courts are permitted to conduct preliminary appearances, arraignments, bail hearings, and trial settings by video conference. See [LCrR 4.11\(a\)](#). King County trial courts are permitted to conduct other criminal trial court proceedings by video conference upon agreement of the parties in writing or on the record. See [LCrR 4.11\(b\)](#). Although this rule does not authorize the use of video telecommunications in civil matters, a judge may be able to order the use of video technology to be used in isolation and quarantine hearings pursuant to the judge's general authority to provide for the orderly conduct of proceedings before it. [RCW 2.28.010](#) ("Every court of justice has power . . . [t]o provide for the orderly conduct of proceedings before it or its officers.").
1. **Requirements for a video conference proceeding.** By analogy to [LCrR 4.11\(b\)](#), the court should ensure certain requirements are met during a video conference proceeding.
    - a. **Observation required.** The judge, counsel, all parties, and the public attending the hearing must be able to see, hear, and speak as authorized by the court during the video conference proceeding.
    - b. **Presence of counsel required.** Video conference proceedings must provide for confidential communications between attorney and client.

**NOTE:** Due to the health threat posed by the out-of-court party, the ability of counsel to be "personally present" with the party may be limited. In such cases, the court will need to ensure that the technology enables meaningful consultation between counsel and the out-of-court party while protecting counsel's health.

- c. **Security.** Security must be sufficient at video conference proceedings to protect the safety of all participants and observers.
  - d. **Interpreters.** [LCrR 4.11\(b\)](#) provides that in video conference proceedings conducted in King County Superior Court where an interpreter is used, "the interpreter should be located next to the defendant, and the proceeding must be conducted to assure that the interpreter can hear all participants." If placing the interpreter next to the party needing interpretation will jeopardize the interpreter's health, the judge may direct that the interpreter be at a different location as long as the interpreter can hear all participants.
  - e. **Contemporaneous document transmission required.** All video telecommunications technology used to conduct hearings should enable the contemporaneous transmission of documents and exhibits.

## 7.20 PROTECTION OF COURT PERSONNEL

In the event of an outbreak of infectious disease in a community, the court may find it necessary to adopt the procedures discussed *supra* [§ 7.11](#) to ensure that an individual subject to an isolation or quarantine order does not

expose court personnel to the disease. In certain circumstances, such as when the outbreak has affected large numbers of persons in the community or the infectious disease is easily transmitted through airborne droplets, the court may need to limit public access to the courtroom. In extreme circumstances, the court itself may need to relocate to a non-affected area to ensure its continued operation.

#### 7.21 Relocation of Court

- A. **Relocation of Hearings at Judicial Discretion.** Trials upon the merits must be conducted in open court and so far as convenient in a regular courtroom. [CR 77\(j\)](#). However, all other acts or proceedings may be conducted without the attendance of the clerk or other court officials and at any place either within or without the county. *Id.* No hearing, except an *ex parte* hearing, may be conducted outside the county without the consent of all affected parties. *Id.*
- B. **Relocation by Mutual Agreement of County Council and Judges.** Regular and special sessions of the King County Superior Court may be held at such places within the county other than the county seat as may be mutually agreed upon by the council and the judges of the superior court. [KCC 2.69.010](#). Approval of an alternate location must be by motion of the county council endorsing a memorandum proposal submitted to the chair of the county council by the presiding judge. [KCC 2.69.030](#).

#### 7.30 PROCEEDINGS INVOLVING NUMEROUS PERSONS

In the event of an infectious disease outbreak, the courts may be called upon to issue numerous isolation and quarantine orders. Judicial surge capacity may be obtained through several logistical and procedural measures.

#### 7.31 Additional Judicial Personnel

- A. **Additional Judges.** The number of judges available to hear matters in the superior court may be augmented through several mechanisms.

**NOTE:** The appointment of additional personnel to hear cases may also be necessary if the judges themselves are unable to sit due to illness.

1. **Use of elected sitting judges from other courts in the state.** The presiding judge of King County Superior Court may assign an elected sitting judge from the Supreme Court, Court of Appeals, District Court, or Municipal Court to serve as an elected judge pro tempore. See WASH. CONST. art. IV, § 7; [RCW 2.08.180](#); [AR 6\(b\)](#). Consent of the elected judge pro tempore is required, but consent of the parties or attorneys is not. [AR 6\(b\)](#).

2. **Use of visiting superior court judges from other counties.** The majority of superior court judges may request a visiting superior court judge from another county by:
  - a. Directing the request to the Governor who shall then request and direct a judge of a superior court of another county to hold a session in the requesting county, [RCW 2.08.140](#); or
  - b. Directing the request to a superior court of another county which judge shall then be empowered to if he or she deems it consistent with the judicial business in his or her county, to hold a session of the requesting superior court in the requesting county. [RCW 2.08.150](#).
3. **Appointment of other pro tempore judges.** A case in superior court may also be tried by a pro tempore judge who is a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case. [RCW 2.08.180](#). The judge pro tempore must take the oath prescribed by [RCW 2.08.180](#) before entering upon his or her duties. The judge pro tempore must be a member of the bar.
4. **Appointment of commissioners.** The judges of the superior court may appoint commissioners who will have the powers prescribed by statute. See generally chapter [2.24 RCW](#). Commissioners may be authorized to preside over some aspects of public health matters and they may handle other matters within their authority to help account for the absence of judges who are handling the public health matters or who are unable to sit due to illness.
  - a. **Qualification criteria.** Court commissioners must be citizens of the United States and take the oath prescribed by law. [RCW 2.24.010](#), [.020](#).
  - b. **Powers.** The statutory powers granted to court commissioners are listed in [RCW 2.24.040](#). As related to public health hearings, a court commissioner may:
    - i. Grant and enter defaults and judgments thereon;
    - ii. Issue temporary restraining orders and temporary injunctions, and fix and approve bonds thereon;
    - iii. Act as a referee in matters referred to it by the superior court;
    - iv. Hear and determine all *ex parte* and uncontested civil matters of any nature;
    - v. Administer oaths; and
    - vi. Compel the attendance of witnesses.
5. **Appointment of other officers.** A superior court judge may appoint other officers as necessary to conduct the court's business. See [RCW 2.32.180](#) (appointment of court reporters).

## 7.32 Consolidation of Cases

- A. **Consolidation.** In any proceedings brought for isolation or quarantine, the court may order consolidation to promote the fair and efficient operation of justice and having given due regard to the rights of the affected persons, the

severity of the threat to the public's health, and the availability of witnesses and evidence. [WAC 246-100-065](#); *supra* [§ 5.31.E.1](#).

- B. *Criteria for Consolidation.*** The court may order the consolidation of individual claims into group claims where:
1. The number of individuals involved or to be affected is so large as to render individual participation impractical;
  2. There are questions of law or fact common to the individual claims or rights to be determined;
  3. The group claims or rights to be determined are typical of the affected persons' claims or rights; and
  4. The entire group will be adequately represented in the consolidation. *Id.*; *supra* [§ 5.31.E.2](#).

#### **7.40 EMERGENCY COURT CLOSURE**

- A. *Emergency Court Closure - Generally.*** A court may be closed if weather, technological failure or other hazardous or emergency conditions or events are or become such that the safety and welfare of the employees are threatened or the court is unable to operate or demands immediate actions to protect the court, its employees or property. [GR 21\(a\)](#).
- B. *Emergency Court Closure - Implementation.***
1. **Administrative Order.** Closure of a court may be ordered by the chief justice, the presiding chief judge, presiding judge, or other judge so designated by the affected court who signs an administrative order which shall be filed with the clerk of the affected court. [GR 21\(a\)](#), (b).
  2. **Notification to Administrative Office of the Courts.** The judge who directs the closure or his or her designee shall notify the Administrative Office of the Courts of any decision to close a court. Oral notifications shall be followed as soon as practicable with a written statement outlining the condition or event necessitating the closure and the length of the closure. [GR 21\(b\)](#).

#### **7.50 PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND LIMITED JURISDICTION COURT DISTRICT**

Each superior court district and each limited jurisdiction court district having more than one judge shall establish a procedure, by local rule, for election, by the judges of the district, of a presiding judge. [GR 29\(a\)](#). The presiding judge is responsible for leading the management and administration of the court's business, recommending policies and procedures that improve the court's effectiveness, and allocating resources to maximize the court's ability to resolve disputes fairly and expeditiously. [GR 29\(e\)](#).

## **APPENDIX A**

### **TUBERCULOSIS CONTROL**

#### **Involuntary Detention for Examination, Testing, and Treatment**

##### **A. Health Officer Authority and Orders.**

1. **Health officer authority.** Each health officer is invested with full powers of inspection, examination, treatment, and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for treatment or periodic follow-up examinations and is hereby directed:
  - a. To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and isolate and treat or isolate, treat, and quarantine such persons whenever deemed necessary for the protection of the public health. [RCW 70.28.031\(a\)](#).
  - b. To make such examinations as are deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations. [RCW 70.28.031\(b\)](#).
  - c. To follow local rules and regulations regarding examinations, treatment, quarantine, or isolation, and all rules, regulations, and orders of the state board of health and of the state department of health in carrying out examination, treatment, quarantine, or isolation. [RCW 70.28.031\(c\)](#).
2. **Orders.**
  - a. **Examination or treatment.** Whenever the health officer determines on reasonable grounds that an examination or treatment of any person is necessary for the protection of the public health, he or she shall make an examination order in writing, setting forth:
    - i. The name of the person to be examined;
    - ii. The time and place of the examination;
    - iii. The treatment; and
    - iv. Such other terms and conditions as necessary to protect the public health. [RCW 70.28.031\(d\)](#).
  - b. **Treatment, isolation, or quarantine.** Whenever the health officer determines that treatment, isolation, or quarantine, is necessary for the protection of the public health, he or she shall make an order in writing, setting forth:
    - i. The name of the person;
    - ii. The period of time during which the order shall remain effective;
    - iii. The place of treatment, isolation, or quarantine; and
    - iv. Such other terms and conditions as necessary to protect the public health. [RCW 70.28.031\(e\)](#).
  - c. **Service of orders.** A copy of the order shall be served upon the person named in the order. [RCW 70.28.031\(f\)](#).

- d. **Right to choose physician.** A person is not prevented from receiving examination or treatment from a physician of his or her choice under terms and conditions that the health officer shall determine on reasonable grounds to be necessary to protect the public health. [RCW 70.28.031\(d\)](#).
- e. **Right to rely on spiritual means.** The right of any person to rely exclusively on spiritual means is not abridged, nor may a person be prohibited from isolation or quarantine in a private place of choice provided it is approved by the local health officer. [RCW 70.28.031\(i\)](#).
- f. **Violation of orders.**
  - i. **Notice to prosecuting attorney.** Upon receipt of information that an order has been violated, the health officer shall advise the prosecuting attorney of the county in which the violation occurred, in writing, and shall submit to the prosecuting attorney information relating to the order and violations thereof. [RCW 70.28.031\(g\)](#).
  - ii. **Misdemeanor.** A violation of an order of a health officer directing treatment, isolation, or examination, is a misdemeanor. A person convicted may be ordered confined until the order of the health officer is complied with but not to exceed six months. Alternatively, the court may place the person upon probation for a period not to exceed two years. [RCW 70.28.033](#).

## **B. *Involuntary Detention.***

- 1. **In whom powers vested.**
  - a. **State Board of Health authority to adopt rules.** The State Board of Health shall adopt rules establishing requirements for due process standards for health officers exercising their authority to involuntarily detain, test, treat, or isolate persons with suspected or confirmed tuberculosis under [RCW 70.28.031](#) and [70.05.070](#). The standards are to provide for release from involuntary detention, testing, treatment, or isolation as soon as the health officer determines that the patient no longer represents a risk to the public's health. [RCW 70.28.032](#).
  - b. **Local health officer authority to implement isolation and quarantine.** The State Board of Health has adopted rules containing procedures for local health officers to initiate involuntary detention. See generally [WAC 246-170-051](#) to [-065](#).
- 2. **Reasonable efforts to obtain voluntary compliance.** The local health officer shall make reasonable efforts to obtain voluntary compliance with requests for examination, testing, and treatment prior to initiating the procedures for involuntary detention. [WAC 246-170-051\(1\)](#).

## **C. *Types of Detention.***

- 1. **Emergency detention.**
  - a. **Basis for local health officer to initiate.** The local health officer may initiate detention if he or she has reason to believe that:
    - i. A person is a suspected case and has failed to comply with a documented request from a health care practitioner or the local health officer to submit to examination and testing;

- ii. A person with confirmed tuberculosis is failing to comply with an individual treatment plan approved by the local health officer;
  - iii. A person is either a suspected or confirmed case and is failing to comply with infection control directives issued by the local health officer; or
  - iv. A person is a suspected or confirmed case based upon generally accepted standards of medical and public health science. [WAC 246-170-051\(2\)](#).
- b. **Alternative procedures for emergency detention.** The local health officer may:
- i. Detain the person;
  - ii. Cause the person to be detained by written order; or
  - iii. Petition the superior court *ex parte* for an order to take the person into emergency detention. *Id.*
- c. **Notice at time of detention.** At the time of detention the person detained shall be given the following written notice.

NOTICE: You have the right to a superior court hearing within seventy-two hours of detention, excluding holidays and weekends. You have the right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

You have the right to contest the facts alleged against you, to cross-examine witnesses, and to present evidence and witnesses on your behalf.

You have a right to appeal any decision made by the court.

You may be given appropriate TB medications only on your informed consent, or pursuant to a court order.

[WAC 246-170-051\(3\)](#).

2. **Continued detention.**

a. **Petition.**

- i. **Timing.** Within one (1) judicial day of initial detention, the local health officer shall file with the superior court in the county of detention a petition for detention. [WAC 246-170-051\(4\)](#).
- ii. **Contents.** The petition shall specify:
  - (A) The basis for the local health officer's belief that the respondent is either a suspected or confirmed case; including the name, address and phone numbers of the persons whom the health officer expects to testify and the medical tests and records relied upon by the local health officer;
  - (B) The specific actions taken by the local health officer to obtain voluntary compliance with recommended examination and testing or treatment;

- (C) The nature and duration of further detention or other court-ordered action that the local health officer believes is necessary in order to assure that the respondent is appropriately tested or treated;
  - (D) The basis for believing that further detention or other court-ordered action is necessary to protect the public health; and
  - (E) Other information the local health officer believes is pertinent to the proper resolution of the petition. *Id.*
- iii. **Service.** The health officer shall serve a copy of the petition on the individual named therein at the time of the detention. If the person informs the health officer that he or she is represented by legal counsel, service on such counsel shall be made by delivering a copy of the petition to the attorney's office no later than the time of filing the petition. [WAC 246-170-051\(5\)](#).
- b. **Hearing.**
  - i. **Timing.** The superior court shall hold a hearing on a petition for detention within seventy-two (72) hours of initial detention, excluding weekends and holidays. [WAC 246-170-055\(1\)](#).
  - ii. **Burden of proof.** The local health officer shall have the burden of proving the allegations in the petition by a preponderance of the evidence. *Id.*
  - iii. **Rights of respondent.** The person named in the petition shall have the right to cross-examine witnesses, present evidence, and be represented by an attorney. If the person is indigent and requests appointment of legal counsel, legal counsel shall be appointed at public expense at least twenty-four (24) hours prior to the superior court hearing. *Id.*
  - iv. **Court action at conclusion of hearing.** At the conclusion of the hearing, the court shall consider the evidence, the action taken by the health officer to secure voluntary compliance by the patient, and the purpose and intent of the public health laws, and may take one of the following actions:
    - (A) **Suspected case.** If the court finds that the respondent is a suspected case, the court may enter an order requiring further examination, testing, and treatment. If the court finds that further detention is necessary in order to assure that the examination, testing, and treatment occurs, or to protect the public health, the court may order detention for an additional period not to exceed forty-five (45) days. The results of testing shall be provided to the court and the person detained as soon as they are available. The court may conduct an additional hearing. [WAC 246-170-055\(2\)\(a\)](#).
    - (B) **Confirmed case / less restrictive measures.** If the court finds that a person is a confirmed case, that further measures less restrictive than detention are necessary to assure appropriate treatment, and that less restrictive measures will be sufficient to protect the public health, the court may enter an order setting forth such measures. [WAC 246-170-055\(2\)\(b\)](#).
    - (C) **Confirmed case / detention.** If the court finds that a person is a confirmed case, that further detention is necessary to protect

the public health, and that less restrictive measures will not be sufficient to protect the public health, the court may enter an order for detention for an additional period not to exceed forty-five (45) days. [WAC 246-170-055\(2\)\(c\)](#).

(D) **Insufficient evidence.** If the court finds that there is insufficient evidence to support the petition for detention, the court shall immediately release the person detained. [WAC 246-170-055\(2\)\(d\)](#).

3. **Additional period(s) of continued detention.** The court may extend a period of court-ordered detention for additional periods not to exceed one hundred eighty (180) days each following a hearing. As an alternative to extending the period of detention, the court may order less restrictive measures if they are sufficient to protect the public health. [WAC 246-170-055\(4\)](#).
4. **Release from detention.** A person detained may be released prior to the expiration of court-ordered detention if less restrictive measures are sufficient to protect the public health. The court may impose conditions on the release as the court finds necessary to protect the public health. A person detained may petition the court for release based upon new evidence or a change in circumstances. [WAC 246-170-055\(3\)](#).
5. **Failure to complete treatment after release from detention.** If a person has been released from detention and fails to comply with the prescribed course of treatment, the health officer where the individual is found may detain the person, and any court having jurisdiction of the person may order the person detained for an additional period or periods, not to exceed one hundred eighty (180) days each, as the court finds necessary to protect the public health. [WAC 246-170-055\(5\)](#).
6. **Detention in other county.** If a person has been detained in a county other than the county in which the court that originally ordered the detention is located, venue may remain in the original county, or may be transferred to the county of detention. Change in venue may be sought either by the local health officer in the original county or in the county of detention, or by the person detained. Except as otherwise agreed between the original health officer and the health officer in the county of detention, the original health officer retains jurisdiction over the detained person, including financial responsibility for costs incurred in implementing and continuing the detention. [WAC 246-170-055\(6\)](#).
7. **Rights of respondent at hearings.** Court orders shall be entered only after a hearing at which the respondent is accorded the same rights as at the initial hearing on the petition for detention. [WAC 246-170-055\(7\)](#).
8. **Notice to transporting law enforcement agency and receiving facility.** When a court order for detention is issued, the transporting law enforcement agency and the receiving facility shall be informed of the infectious TB status of the person prior to the transport. Disclosure shall be accompanied by a statement in writing which includes the following or

substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it except as authorized by state law." [WAC 246-170-055\(8\)](#).

9. **Initiation of testing or treatment of detained persons.** If a person has been detained, the health officer may begin testing or treatment, with informed consent, or pursuant to a court order as appropriate, pending the required hearing. [WAC 246-170-061](#).
10. **Not applicable to persons already detained.** The provisions for involuntary testing, treatment, and detention do not apply to persons who have been detained to the custody of a penal institution, a mental health facility, or another public or private institution. [WAC 246-170-065](#).

#### Example of Declaration of Disease Control Officer in Hypothetical TB Case

I, xxxxxxx, , declare as follows:

1. I am over the age of eighteen and make this declaration based upon my own personal knowledge, and after personally reviewing the records of this office concerning Respondent.
2. I am a licensed physician in the State of Washington, and the Tuberculosis Control Officer and Director of the Tuberculosis Control Program for the Seattle-King County Department of Public Health. I am responsible for programs to control tuberculosis within King County pursuant to chapter 70.28 RCW and chapter 246-170 WAC.
3. Tuberculosis (TB) is a respiratory illness. It is transmitted when an infectious person expels airborne droplets that are inhaled into the lungs of an exposed person. TB usually remains dormant and latent in an exposed person. A person with latent TB does not have symptoms and is not infectious to other people. TB can become active, however, especially in persons with weakened immune systems. Impaired immune systems can result from poor health and abuse of alcohol or illicit drugs. A person with active infectious TB may develop symptoms and deteriorate if not treated. Treatment for drug-sensitive TB consists of a six- to nine-month course of medication. Medications can be taken twice weekly after the initial two weeks of a daily regimen, although a client could choose to take smaller dosages daily because of the number of pills. A new client

typically starts on a medication schedule of seven days per week, with Directly Observed Therapy (DOT) on weekdays and self-administration on weekends. In DOT, the client is observed ingesting the medication.

4. Persons with active TB often are infectious during the first two to eight weeks of treatment and then non-infectious for the duration of the treatment. In a small portion of cases with severe TB, infectiousness can continue beyond eight weeks. Preliminary indication of infectiousness is based on results of follow-up sputum smear examinations. Persons with active TB are considered infectious until they have received at least two weeks of treatment and have three consecutive negative sputum smears.

5. Even after a person is considered non-infectious, the entire course of treatment must be completed. A person likely will become infectious again if treatment is interrupted. Furthermore, when TB resurges, it may become a multi-drug resistant strain. Persons with multi-drug resistant TB have a higher mortality rate, stay infectious for longer periods of time, and require at least 18 to 24 months of treatment. Multi-drug resistant strains can be transmitted during the infectious stage. Multi-drug resistant strains can be confirmed only in cultures grown from sputum, not in sputum smears. Cultures are grown from sputum collections, which takes up to ten weeks to provide the final results.

6. The Respondent, xxxxxxxx, is a confirmed case of TB. The xxxxxxxx Hospital laboratory reported a positive bacteriologic culture for mycobacterium tuberculosis on January \_\_\_\_\_, 2006.

7. The Respondent was registered with the PHSKC Tuberculosis Control Program on January \_\_\_\_\_, 2006. She signed the "Counseling for Directly Observed Therapy (DOT) for Tuberculosis." xxxxxxxx was assigned as her Nursing Case Manager (NCM). The Respondent was discharged from xxxxxxxx Hospital on January \_\_\_\_\_, 2006.

8. My designees and I have made repeated and reasonable efforts to obtain Respondent's voluntary compliance with requests for examination and treatment.

9. Beginning January \_\_\_\_\_ 10, 2006, Outreach Worker (ORW) administered DOT to the Respondent at her apartment. On January \_\_\_\_\_, 2006, the Respondent signed the "Acknowledgement of Tuberculosis Counseling." The Respondent received all scheduled doses through February \_\_\_\_\_, 2006.

10. On February \_\_\_\_\_, 2006, the ORW xxxxxxxx could not locate the Respondent at her apartment. From February \_\_\_\_\_, 2006, through March \_\_\_\_\_, 2006, the Respondent was not available for DOT. On March 10, 2006, the Respondent told the ORW that she had been on a drinking binge.

11. From March \_\_\_\_\_, 2006, through April \_\_\_\_\_, 2006, the Respondent was generally compliant with the DOT requirement.

12. From April \_\_\_\_\_, 2006, through April \_\_\_\_\_, 2006, the Respondent was not available for DOT. On April \_\_\_\_\_, 2006, ORW located the Respondent, but she refused to take the medication.

13. ORW located Respondent at her apartment on April \_\_\_\_\_, 2006, and she was intoxicated. The Respondent then missed appointments on April \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, 2006. On May \_\_\_\_\_, 2006 ORW brought the Respondent to the TB Clinic. I delivered a Public Health Directive to the Respondent, directing her to comply with treatment requirements and refrain from use of alcohol. Since that date Respondent has not been available for DOT.

14. I cannot predict when the Respondent will no longer be infectious. The Respondent's sputum smears should be tested once a week, and there must be three consecutive negative tests before the Respondent will be considered non-infectious. Until then, the Respondent must remain isolated.

15. I believe that the following detention or other measure(s) is necessary in order to ensure that Respondent is appropriately tested or treated: (1) isolation for the 72-hour period permitted by WAC 246-170-051 at a location approved by PHSKC; (2)

continued isolation as needed and treatment for the 45-day period permitted by WAC 246-170-055 at a location approved by PHSKC; and (3) continued testing, monitoring and treatment determined necessary by myself and my designees. The Respondent may go outside if she wears a mask. PHSKC will provide a room at the designated motel, delivery of groceries, and DOT on weekdays.

16. I believe that detention or other measure(s) is necessary because Respondent must be considered to be infectious, and has demonstrated her unwillingness to comply with voluntary measures for treatment and to prevent the spread of TB to others.

17. I request that the Court order:

- (1) Respondent's detention for the 72-hour period permitted by WAC 246-170-051, excluding weekends and holidays, to occur at: See Sealed Data, filed with the Court.
- (2) Respondent's continued detention or the imposition of less restrictive measures for the additional 45-day period permitted by WAC 246-170-055, to occur at: See Sealed Data, filed with the Court.

18. I further request that the Court order Respondent to comply with examination, testing, treatment, and infection control directives determined necessary by myself and my designees. I do not request an order for compelled testing and treatment.

19. Testimony concerning this case will be received primarily from the following persons:

- 1. xxxxx, Tuberculosis Control Officer and Director  
Tuberculosis Control Program  
Harborview Medical Center  
325 9<sup>th</sup> Avenue, Box 359776  
Seattle, WA 98104
- 2. xxxxxx, Nursing Case Manager  
Tuberculosis Control Program  
Harborview Medical Center  
325 9<sup>th</sup> Avenue, Box 359776  
Seattle, WA 98104
- 3. xxxxxx, ORW

Tuberculosis Control Program  
Harborview Medical Center  
325 9<sup>th</sup> Avenue, Box 359776  
Seattle, WA 98104

I declare under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ at  
\_\_\_\_\_, Washington.

By: \_\_\_\_\_  
Signature

Dr. \_\_\_\_\_  
Printed Name

## **APPENDIX B**

### **CITED WASHINGTON STATUTES AND ADMINISTRATIVE CODE PROVISIONS**

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## **Revised Code of Washington**

### **RCW 2.04.010          Jurisdiction**

The supreme court shall have original jurisdiction in habeas corpus and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy or the value of the property does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or before the supreme court, or before any superior court of the state, or any judge thereof.

### **RCW 2.06.030          General powers and authority — Transfers of cases — Appellate jurisdiction, exceptions — Appeals.**

The administration and procedures of the court shall be as provided by rules of the supreme court. The court shall be vested with all power and authority, not inconsistent with said rules, necessary to carry into complete execution all of its judgments, decrees and determinations in all matters within its jurisdiction, according to the rules and principles of the common law and the Constitution and laws of this state.

For the prompt and orderly administration of justice, the supreme court may (1) transfer to the appropriate division of the court for decision a case or appeal pending before the supreme court; or (2) transfer to the supreme court for decision a case or appeal pending in a division of the court.

Subject to the provisions of this section, the court shall have exclusive appellate jurisdiction in all cases except:

(a) cases of quo warranto, prohibition, injunction or mandamus directed to state officials;

(b) criminal cases where the death penalty has been decreed;

(c) cases where the validity of all or any portion of a statute, ordinance, tax, impost, assessment or toll is drawn into question on the grounds of repugnancy to the Constitution of the United States or of the state of Washington, or to a statute or treaty of the United States, and the superior court has held against its validity;

(d) cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination; and

(e) cases involving substantive issues on which there is a direct conflict among prevailing decisions of panels of the court or between decisions of the supreme court;

all of which shall be appealed directly to the supreme court: PROVIDED, That whenever a majority of the court before which an appeal is pending, but before a hearing thereon, is in doubt as to whether such appeal is within the categories set forth in subsection (d) or (e) of this section, the cause shall be certified to the supreme court for such determination.

The appellate jurisdiction of the court of appeals does not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars.

The court shall have appellate jurisdiction over review of final decisions of administrative agencies certified by the superior court pursuant to RCW 34.05.518.

Appeals from the court to the supreme court shall be only at the discretion of the supreme court upon the filing of a petition for review. No case, appeal or petition for a writ filed in the supreme court or the court shall be dismissed for the reason that it was not filed in the proper court, but it shall be transferred to the proper court.

### **RCW 2.08.010          Original jurisdiction**

The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce and for annulment of marriage, and for such special cases and proceedings as are not otherwise provided for; and shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other

court, and shall have the power of naturalization and to issue papers therefor. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued on legal holidays and nonjudicial days.

**RCW 2.08.140 Visiting judge at direction of governor.**

Whenever a judge of the superior court of any county in this state, or a majority of such judges in any county in which there is more than one judge of said court, shall request the governor of the state to direct a judge of the superior court of any other county to hold a session of the superior court of any such county as is first herein above mentioned, the governor shall thereupon request and direct a judge of the superior court of some other county, making such selection as the governor shall deem to be most consistent with the state of judicial business in other counties, to hold a session of the superior court in the county the judge shall have requested the governor as aforesaid. Such request and direction by the governor shall be made in writing, and shall specify the county in which he directs the superior judge to whom the same is addressed to hold such session of the superior court, and the period during which he is to hold such session. Thereupon it shall be the duty of the superior judge so requested, and he is hereby empowered to hold a session of the superior court of the county specified by the governor, at the seat of judicial business thereof, during the period specified by the governor, and in such quarters as the county commissioners of said county may provide for the holding of such session.

**RCW 2.08.150 Visiting judge at request of judge or judges.**

Whenever a like request shall be addressed by the judge, or by a majority of the judges (if there be more than one) of the superior court of any county to the superior judge of any other county, he is hereby empowered, if he deem it consistent with the state of judicial business in the county or counties whereof he is a superior judge (and in such case it shall be his duty to comply with such request), to hold a session of the superior court of the county the judge or judges whereof shall have made such request, at the seat of judicial business of such county, in such quarters as shall be provided for such session by the board of county commissioners, and during such period as shall have been specified in the request, or such shorter period as he may deem necessary by the state of judicial business in the county or counties whereof he is a superior judge.

**RCW 2.08.180 Judge pro tempore — Appointment — Oath — Compensation.**

A case in the superior court of any county may be tried by a judge pro tempore, who must be either: (1) A member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case; or (2) pursuant to supreme court rule, any sitting elected judge. Any action in the trial of such cause shall have the same effect as if it was made by a judge of such court. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.

A judge pro tempore shall, before entering upon his or her duties in any cause, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein . . . . . is plaintiff and . . . . . defendant, according to the best of my ability."

A judge pro tempore who is a practicing attorney and who is not a retired justice of the supreme court or judge of a superior court of the state of Washington, or who is not an active judge of a court of the state of Washington, shall receive a compensation of one-two hundred fiftieth of the annual salary of a superior court judge for each day engaged in said trial, to be paid in the same manner as the salary of the superior judge. A judge who is an active full-time judge of a court of the state of Washington shall receive no compensation as judge pro tempore. A judge who is an active part-time judge of a court of the state of Washington may receive compensation as a judge pro tempore only when sitting as a judge pro tempore during time for which he or she is not compensated as a part-time judge. A justice or judge who has retired from the supreme court, court of appeals, or superior court of the state of Washington shall receive compensation as judge pro tempore in the amount of sixty percent of the amount payable to a judge pro tempore under this section, provided that a retired justice or judge may decline to accept compensation.

**RCW 2.24.010 Appointment of court commissioners**

There may be appointed in each county or judicial district, by the judges of the superior court having jurisdiction therein, one or more court commissioners for said county or judicial district. Each such commissioner shall be a citizen of the United States and shall hold the office during the pleasure of the judges making the appointment.

**RCW 2.24.020          Oath**

Court commissioners appointed hereunder shall, before entering upon the duties of such office, take and subscribe an oath to support the Constitution of the United States, the Constitution of the state of Washington, and to perform the duties of such office fairly and impartially and to the best of his ability.

**RCW 2.24.040          Powers — Fees**

Such court commissioner shall have power, authority, and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

- (1) To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state.
- (2) To grant and enter defaults and enter judgment thereon.
- (3) To issue temporary restraining orders and temporary injunctions, and to fix and approve bonds thereon.
- (4) To act as referee in all matters and actions referred to him or her by the superior court as such, with all the powers now conferred upon referees by law.
- (5) To hear and determine all proceedings supplemental to execution, with all the powers conferred upon the judge of the superior court in such matters.
- (6) To hear and determine all petitions for the adoption of children and for the dissolution of incorporations.
- (7) To hear and determine all applications for the commitment of any person to the hospital for the insane, with all the powers of the superior court in such matters: PROVIDED, That in cases where a jury is demanded, same shall be referred to the superior court for trial.
- (8) To hear and determine all complaints for the commitments of minors with all powers conferred upon the superior court in such matters.
- (9) To hear and determine ex parte and uncontested civil matters of any nature.
- (10) To grant adjournments, administer oaths, preserve order, compel attendance of witnesses, and to punish for contempts in the refusal to obey or the neglect of the court commissioner's lawful orders made in any matter before the court commissioner as fully as the judge of the superior court.
- (11) To take acknowledgments and proofs of deeds, mortgages and all other instruments requiring acknowledgment under the laws of this state, and to take affidavits and depositions in all cases.
- (12) To provide an official seal, upon which shall be engraved the words "Court Commissioner," and the name of the county for which he or she may be appointed, and to authenticate his official acts therewith in all cases where same is necessary.
- (13) To charge and collect, for his or her own use, the same fees for the official performance of official acts mentioned in subsections (4) and (11) of this section as are provided by law for referees and notaries public.
- (14) To hear and determine small claims appeals as provided in chapter 12.36 RCW.
- (15) In adult criminal cases, to preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings pursuant to RCW 9.94A.634; accept pleas if authorized by local court rules; appoint counsel; make determinations of probable cause; set, amend, and review conditions of pretrial release; set bail; set trial and hearing dates; authorize continuances; and accept waivers of the right to speedy trial.

**RCW 2.28.010          Powers of courts in conduct of judicial proceedings**

Every court of justice has power -- (1) To preserve and enforce order in its immediate presence. (2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority. (3) To provide for the orderly conduct of proceedings before it or its officers. (4) To compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein. (5) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto. (6) To compel the attendance of persons to testify in an action, suit or proceeding therein, in the cases and manner provided by law. (7) To administer oaths in an action, suit or proceeding

pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

**RCW 2.32.180 Superior court reporters**

It shall be and is the duty of each and every superior court judge in counties or judicial districts in the state of Washington having a population of over thirty-five thousand inhabitants to appoint, or said judge may, in any county or judicial district having a population of over twenty-five thousand and less than thirty-five thousand, appoint a stenographic reporter to be attached to the judge's court who shall have had at least three years' experience as a skilled, practical reporter, or who upon examination shall be able to report and transcribe accurately one hundred and seventy-five words per minute of the judge's charge or two hundred words per minute of testimony each for five consecutive minutes; said test of proficiency, in event of inability to meet qualifications as to length of time of experience, to be given by an examining committee composed of one judge of the superior court and two official reporters of the superior court of the state of Washington, appointed by the president judge of the superior court judges association of the state of Washington: PROVIDED, That a stenographic reporter shall not be required to be appointed for the seven additional judges of the superior court authorized for appointment by section 1, chapter 323, Laws of 1987, the additional superior court judge authorized by section 1, chapter 66, Laws of 1988, the additional superior court judges authorized by sections 2 and 3, chapter 328, Laws of 1989, the additional superior court judges authorized by sections 1 and 2, chapter 186, Laws of 1990, or the additional superior court judges authorized by sections 1 through 5, chapter 189, Laws of 1992. Appointment of a stenographic reporter is not required for any additional superior court judge authorized after July 1, 1992. The initial judicial appointee shall serve for a period of six years; the two initial reporter appointees shall serve for a period of four years and two years, respectively, from September 1, 1957; thereafter on expiration of the first terms of service, each newly appointed member of said examining committee to serve for a period of six years. In the event of death or inability of a member to serve, the president judge shall appoint a reporter or judge, as the case may be, to serve for the balance of the unexpired term of the member whose inability to serve caused such vacancy. The examining committee shall grant certificates to qualified applicants. Administrative and procedural rules and regulations shall be promulgated by said examining committee, subject to approval by the said president judge.

The stenographic reporter upon appointment shall thereupon become an officer of the court and shall be designated and known as the official reporter for the court or judicial district for which he or she is appointed: PROVIDED, That in no event shall there be appointed more official reporters in any one county or judicial district than there are superior court judges in such county or judicial district; the appointments in each county with a population of one million or more shall be made by the majority vote of the judges in said county acting en banc; the appointments in each county with a population of from one hundred twenty-five thousand to less than one million may be made by each individual judge therein or by the judges in said county acting en banc. Each official reporter so appointed shall hold office during the term of office of the judge or judges appointing him or her, but may be removed for incompetency, misconduct or neglect of duty, and before entering upon the discharge of his or her duties shall take an oath to perform faithfully the duties of his or her office, and file a bond in the sum of two thousand dollars for the faithful discharge of his or her duties. Such reporter in each court is hereby declared to be a necessary part of the judicial system of the state of Washington.

**RCW 4.12.060 To what county venue may be changed — Limitation on number of changes.**

If the motion for a change of the place of trial be allowed, the change shall be made to the county where the action ought to have been commenced, if it be for the cause mentioned in RCW 4.12.030(1), and in other cases to the most convenient county where the cause alleged does not exist. Neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed.

**RCW 7.16.160 Grounds for granting writ.**

It may be issued by any court, except a district or municipal court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person.

**RCW 7.16.170 Absence of remedy at law required — Affidavit.**

The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit on the application of the party beneficially interested.

**RCW 7.16.180 Alternative or peremptory writs — Form.**

The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so.

The peremptory writ must be in some similar form, except the words requiring the party to show cause why he has not done as commanded must be omitted and a return [day] inserted.

**RCW 7.16.210            Questions of fact, how determined.**

If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the appellant may have sustained, in case they find for him.

**RCW 7.16.270            Service of writ.**

The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

**RCW 7.16.290            Prohibition defined.**

The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

**RCW 7.16.300            Grounds for granting writ — Affidavit.**

It may be issued by any court, except district or municipal courts, to an inferior tribunal, or to a corporation, board or person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

**RCW 7.16.310            Alternative or peremptory writs — Form.**

The writ must be either alternative or peremptory. The alternative writ must state generally the allegations against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

**RCW 7.16.320            Provisions relating to mandate applicable.**

The provisions of this chapter relating to writ of mandate, apply to this proceeding.

**RCW 7.16.340            Rules of practice.**

Except as otherwise provided in this chapter, the provisions of the code of procedure concerning civil actions are applicable to and constitute the rules of practice in the proceedings in this chapter.

**RCW 7.36.010            Who may prosecute writ.**

Every person restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.

**RCW 7.36.020            Parents, guardians, etc., may act for persons under disability.**

Writs of habeas corpus shall be granted in favor of parents, guardians, limited guardians where appropriate, spouses, and next of kin, and to enforce the rights, and for the protection of infants and incompetent or disabled persons within the meaning of RCW 11.88.010; and the proceedings shall in all cases conform to the provisions of this chapter.

**RCW 7.36.030            Petition — Contents.**

Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

- (1) By whom the petitioner is restrained of his liberty, and the place where, (naming the parties if they are known, or describing them if they are not known).
- (2) The cause or pretense of the restraint according to the best of the knowledge and belief of the applicant.
- (3) If the restraint be alleged to be illegal, in what the illegality consists.

**RCW 7.36.040            Who may grant writ.**

Writs of habeas corpus may be granted by the supreme court, the court of appeals, or superior court, or by any judge of such courts, and upon application the writ shall be granted without delay.

**RCW 7.36.050            To whom directed — Contents.**

The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the court or judge at such time and place as the court or judge shall direct to do and receive what shall be ordered concerning him, and have then and there the writ.

**RCW 10.31.100          Arrest without warrant.**

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (10) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

- (3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of

the following traffic laws shall have the authority to arrest the person:

- (a) RCW 46.52.010, relating to duty on striking an unattended car or other property;
- (b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;
- (d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;
- (e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;
- (f) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(10) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(11) Except as specifically provided in subsections (2), (3), (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(12) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police officer acts in good faith and without malice.

#### **RCW 16.36.005        Definitions.**

As used in this chapter:

"Animal" means all members of the animal kingdom except humans, fish, and insects. However, "animal" does not mean noncaptive wildlife as defined in RCW 77.08.010(16), except as used in RCW 16.36.050(1) and 16.36.080 (1), (2), (3), and (5).

"Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals.

"Farm-raised fish" means fish raised by aquaculture as defined in RCW 15.85.020. Farm-raised fish are considered to be a part of animal agriculture; however, disease inspection, prevention, and control programs and related activities for farm-raised fish are administered by the department of fish and wildlife under chapter 77.115 RCW.

"Communicable disease" means a disease due to a specific infectious agent or its toxic products transmitted from an infected person, animal, or inanimate reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the environment.

"Contagious disease" means a communicable disease that is capable of being easily transmitted from one animal to another animal or a human.

"Director" means the director of agriculture of the state of Washington or his or her authorized representative.

"Department" means the department of agriculture of the state of Washington.

"Deputized state veterinarian" means a Washington state licensed and accredited veterinarian appointed and compensated by the director according to state law and department policies.

"Garbage" means the solid animal and vegetable waste and offal together with the natural moisture content resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, markets, meat shops, packing houses and similar establishments or any other food waste containing meat or meat products.

"Herd or flock plan" means a written management agreement between the owner of a herd or flock and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the area veterinarian-in-charge of the United States department of agriculture, animal and plant health inspection service, veterinary services in which each participant agrees to undertake actions specified in the herd or flock plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd or flock and to work toward eradicating the disease in the infected herd or flock.

"Hold order" means an order by the director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a designated holding location pending an investigation by the director of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products.

"Infectious agent" means an organism including viruses, rickettsia, bacteria, fungi, protozoa, helminthes, or prions that is capable of producing infection or infectious disease.

"Infectious disease" means a clinical disease of humans or animals resulting from an infection with an infectious agent that may or may not be communicable or contagious.

"Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.

"Person" means a person, persons, firm, or corporation.

"Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering this state, as may be directed in an order by the director.

"Reportable disease" means a disease designated by rule by the director as reportable to the department by veterinarians and others made responsible to report by statute.

"Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals.

#### **RCW 16.36.010      Quarantine — Hold order.**

(1) The director shall supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state.

(2) The director may issue a quarantine order and enforce the quarantine of any animal or its reproductive products when any animal or its reproductive products are affected with or have been exposed to disease or when there is reasonable cause to investigate whether any animal or its reproductive products are affected with or have been exposed to disease, either within or outside the state. Overt disease or exposure to disease in any animal or its reproductive products need not be immediately obvious for a quarantine order to be issued or enforced. The quarantine shall remain in effect as long as the director deems necessary.

(3) The director may issue a hold order when:

(a) Overt disease or exposure to disease in an animal is not immediately obvious but there is reasonable cause to investigate whether an animal is diseased or has been exposed to disease;

(b) Import health papers, permits, or other transportation documents required by law or rule are not complete or are suspected to be fraudulent; or

(c) Further transport of an animal would jeopardize the well-being of the animal or other animals in Washington state.

A hold order is in effect for seven days and expires at midnight on the seventh day from the date of the hold order. A hold order may be replaced with a quarantine order for the purpose of animal disease control.

(4) Any animal or animal reproductive product placed under a quarantine or hold order shall be kept separate and apart from other animals designated in the instructions of the quarantine or hold order, and shall not be allowed to have anything in common with other animals.

(5) The expenses of handling and caring for any animal or animal reproductive product placed under a quarantine or hold order are the responsibility of the owner.

(6) The director has authority over the quarantine or hold area until the quarantine or hold order is released or the hold order expires.

(7) Any animal or animal reproductive product placed under a quarantine or hold order may not be moved, transported, or sold without written approval from the director or until the quarantine or hold order is released, or the hold order expires.

(8) The director may administer oaths and examine witnesses and records in the performance of his or her duties to control diseases affecting animals.

**RCW 16.36.060      Tests, examinations, or inspections — Entry onto premises — Unlawful conduct — Seizure of property — Search warrant.**

(1) The director has the authority to enter the animal premises of any animal owner at any reasonable time to conduct tests, examinations, or inspections for disease conditions when there is reasonable cause to investigate whether animals on the premises or that have been on the premises are infected with or have been exposed to a reportable disease. It is unlawful for any person to interfere with the tests, inspections, or examinations, or to alter any segregation or identification systems made in connection with the tests, inspections, or examinations. When the director has determined that there is probable cause that there is a serious risk from disease or contamination, the director may seize those items necessary to conduct the tests, inspections, or examinations.

(2) If the director is denied access to the animal premises or the animals for purposes of conducting tests, inspections, or examinations or the animal owner fails to comply with an order of the director, the director may apply to a court of competent jurisdiction for a search warrant. The warrant may authorize access to any animal or animal premises for purposes of conducting tests, inspections, or examinations of any animal or animal premises, or taking samples, and may authorize seizure or destruction of property. The warrant shall be issued upon probable cause being found by the court. It is sufficient probable cause to show a potential threat to the agricultural interests of this state or a potential threat which seriously endangers animals, human health, the environment, or public welfare. To show that access is denied, the director shall file with the court an affidavit or declaration containing a description of all attempts to notify and locate the owner or the owner's agent and to secure consent.

**RCW 16.36.080      Veterinarians and others to report diseases — Director's duties — Unlawful importation.**

(1) Any person licensed to practice veterinary medicine, surgery, and dentistry in this state, veterinary laboratories, and others designated by this chapter shall immediately report in writing or by telephone, facsimile, or electronic mail to the director the existence or suspected existence of any reportable disease among animals within the state.

(2) Persons using their own diagnostic services must report any reportable disease among animals within the state to the director.

(3) The director shall investigate and/or maintain records of all cases of reportable diseases among animals within this state.

(4) The director may require appropriate treatment of any animal affected with, suspected of being affected with, or that has been exposed to any reportable disease. The owner may dispose of the animal rather than treating the animal as required by the director.

(5) It is unlawful for any person to import any animal infected with or exposed to a reportable disease without a permit from the director.

**RCW 16.36.090      Destruction of diseased or quarantined animals.**

When public welfare demands, the director may order the slaughter or destruction of any animal affected with or exposed to any contagious, infectious, or communicable disease that is affecting or may affect the health of the state's animal population. The director may order destruction of any animal held under quarantine when public welfare demands or the owner of the animal fails or refuses to follow a herd or flock plan. The director shall give a written order directing an animal be destroyed by or under the direction of the state veterinarian.

**RCW 16.36.098      Quarantine, hold order, or destruct order — Written request for hearing.**

Any person whose animal or animal reproductive products are placed under a quarantine, a hold order, or destruct order under RCW 16.36.090 may request a hearing. The request for a hearing must be in writing and filed with the director. Any hearing will be held in conformance with RCW 34.05.422 and 34.05.479.

**RCW 16.36.110      Violations, gross misdemeanor — Injunction — Denial, revocation, or suspension of license.**

(1) Any person who violates any provision of this chapter or the rules adopted under this chapter shall be guilty of a gross misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

(2) The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted under this chapter in the superior court of Thurston county or of the county in which such violation occurs notwithstanding the existence of other remedies at law.

(3) The director may deny, revoke, or suspend any license issued under this chapter for any failure or refusal to comply with this chapter or rules adopted under this chapter. Upon notice by the director to deny, revoke, or suspend a license, a person may request a hearing under chapter [34.05](#) RCW.

**RCW 16.70.020      Definitions.**

The following words or phrases as used in this chapter shall have the following meanings unless the context indicates otherwise:

(1) "Pet animals" means dogs (Canidae), cats (Felidae), monkeys and other similar primates, turtles, psittacine birds, skunks, or any other species of wild or domestic animals sold or retained for the purpose of being kept as a household pet.

(2) "Secretary" means the secretary of the department of health or his or her designee.

(3) "Department" means the department of health.

(4) "Board" means the Washington state board of health.

(5) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(6) "Quarantine" means the placing and restraining of any pet animal or animals by direction of the secretary, either within a certain described and designated enclosure or area within this state, or the restraining of any such pet animal or animals from entering this state.

**RCW 16.70.030      Emergency action authorized — Scope — Animals as public nuisance**

In the event of an emergency arising out of an outbreak of communicable disease caused by exposure to or contact with pet animals, the secretary is hereby authorized to take any reasonable action deemed necessary by him to protect the public health, including but not limited to the use of quarantine or the institution of any legal action authorized pursuant to Title [7](#) RCW and RCW [43.20A.640](#) through [43.20A.650](#).

The secretary shall have authority to destroy any pet animal or animals which may reasonably be suspected of having a communicable disease dangerous to humans and such animal or animals are hereby declared to be a public nuisance.

**RCW 34.05.422      Rate changes, licenses.**

(1) Unless otherwise provided by law: (a) Applications for rate changes and uncontested applications for licenses may, in the agency's discretion, be conducted as adjudicative proceedings; (b) applications for licenses that are contested by a person having standing to contest under the law and review of denials of applications for licenses or rate changes shall be conducted as adjudicative proceedings; and (c) an agency may not revoke, suspend, or modify a license unless the agency gives notice

of an opportunity for an appropriate adjudicative proceeding in accordance with this chapter or other statute.

(2) An agency with authority to grant or deny a professional or occupational license shall notify an applicant for a new or renewal license not later than twenty days prior to the date of the examination required for that license of any grounds for denial of the license which are based on specific information disclosed in the application submitted to the agency. The agency shall notify the applicant either that the license is denied or that the decision to grant or deny the license will be made at a future date. If the agency fails to give the notification prior to the examination and the applicant is denied licensure, the examination fee shall be refunded to the applicant. If the applicant takes the examination, the agency shall notify the applicant of the result.

(3) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(4) If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

**RCW 34.05.479            Emergency adjudicative proceedings.**

(1) Unless otherwise provided by law, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

(2) The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

(3) The agency shall enter an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the agency's decision to take the specific action.

(4) The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when entered.

(5) After entering an order under this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

(7) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

(8) This section shall not apply to agency action taken pursuant to a provision of law that expressly authorizes the agency to issue a cease and desist order. The agency may proceed, alternatively, under that independent authority.

**RCW 34.05.578            Petition by agency for enforcement.**

(1) In addition to other remedies provided by law, an agency may seek enforcement of its rule or order by filing a petition for civil enforcement in the superior court.

(2) The petition must name as respondent each alleged person against whom the agency seeks to obtain civil enforcement.

(3) Venue is determined as in other civil cases.

(4) A petition for civil enforcement filed by an agency may request, and the court may grant, declaratory relief, temporary or permanent injunctive relief, any other civil remedy provided by law, or any combination of the foregoing.

**RCW 38.52.005            State military department to administer emergency management program — Local organizations authorized to change name.**

The department shall administer the comprehensive emergency management program of the state of Washington as provided for in this chapter. All local organizations, organized and performing emergency management functions pursuant to RCW 38.52.070, may change their name and be called the . . . . . department/division of emergency management.

**RCW 38.52.010        Definitions.**

As used in this chapter:

(1) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(2) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(3) "Political subdivision" means any county, city or town.

(4) "Emergency worker" means any person, including but not limited to an architect registered under chapter 18.08 RCW or a professional engineer registered under chapter 18.43 RCW, who is registered with a local emergency management organization or the department and holds an identification card issued by the local emergency management director or the department for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(5) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(6)(a) "Emergency or disaster" as used in all sections of this chapter except RCW 38.52.430 shall mean an event or set of circumstances which: (i) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(b) "Emergency" as used in RCW 38.52.430 means an incident that requires a normal police, coroner, fire, rescue, emergency medical services, or utility response as a result of a violation of one of the statutes enumerated in RCW 38.52.430.

(7) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural, technological, or human caused disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW.

(8) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor in those cities and towns with mayor-council or commission forms of government, where the mayor is directly elected, and it means the city manager in those cities and towns with council manager forms of government. Cities and towns may also designate an executive head for the purposes of this chapter by ordinance.

(9) "Director" means the adjutant general.

(10) "Local director" means the director of a local organization of emergency management or emergency services.

(11) "Department" means the state military department.

(12) "Emergency response" as used in RCW 38.52.430 means a public agency's use of emergency services during an emergency or disaster as defined in subsection (6)(b) of this section.

(13) "Expense of an emergency response" as used in RCW 38.52.430 means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising from the response to the particular incident. Reasonable costs shall include the costs of providing police, coroner, fire fighting, rescue, emergency medical services, or utility response at the scene of the incident, as well as the salaries of the personnel responding to the incident.

(14) "Public agency" means the state, and a city, county, municipal corporation, district, town, or public authority located, in whole or in part, within this state which provides or may provide fire fighting, police, ambulance, medical, or other emergency services.

(15) "Incident command system" means: (a) An all-hazards, on-scene functional management system that establishes common standards in organization, terminology, and procedures; provides a means (unified command) for the establishment of a common set of incident objectives and strategies during multiagency/multijurisdiction operations while maintaining

individual agency/jurisdiction authority, responsibility, and accountability; and is a component of the national interagency incident management system; or (b) an equivalent and compatible all-hazards, on-scene functional management system.

(16) "Radio communications service company" has the meaning ascribed to it in RCW 82.14B.020.

**RCW 38.52.030      Director — Comprehensive emergency management plan — Statewide enhanced 911 emergency communications network — State coordinator of search and rescue operations — State program for emergency assistance — State coordinator for radioactive and hazardous waste emergency response programs**

(1) The director may employ such personnel and may make such expenditures within the appropriation therefor, or from other funds made available for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.

(2) The director, subject to the direction and control of the governor, shall be responsible to the governor for carrying out the program for emergency management of this state. The director shall coordinate the activities of all organizations for emergency management within the state, and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter, as may be prescribed by the governor.

(3) The director shall develop and maintain a comprehensive, all-hazard emergency plan for the state which shall include an analysis of the natural, technological, or human caused hazards which could affect the state of Washington, and shall include the procedures to be used during emergencies for coordinating local resources, as necessary, and the resources of all state agencies, departments, commissions, and boards. The comprehensive emergency management plan shall direct the department in times of state emergency to administer and manage the state's emergency operations center. This will include representation from all appropriate state agencies and be available as a single point of contact for the authorizing of state resources or actions, including emergency permits. The comprehensive emergency management plan must specify the use of the incident command system for multiagency/multijurisdiction operations. The comprehensive, all-hazard emergency plan authorized under this subsection may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack. This plan shall be known as the comprehensive emergency management plan.

(4) In accordance with the comprehensive emergency management plans and the programs for the emergency management of this state, the director shall procure supplies and equipment, institute training programs and public information programs, and shall take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(5) The director shall make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the capabilities of the state for emergency management, and shall plan for the most efficient emergency use thereof.

(6) The emergency management council shall advise the director on all aspects of the communications and warning systems and facilities operated or controlled under the provisions of this chapter.

(7) The director, through the state enhanced 911 coordinator, shall coordinate and facilitate implementation and operation of a statewide enhanced 911 emergency communications network.

(8) The director shall appoint a state coordinator of search and rescue operations to coordinate those state resources, services and facilities (other than those for which the state director of aeronautics is directly responsible) requested by political subdivisions in support of search and rescue operations, and on request to maintain liaison with and coordinate the resources, services, and facilities of political subdivisions when more than one political subdivision is engaged in joint search and rescue operations.

(9) The director, subject to the direction and control of the governor, shall prepare and administer a state program for emergency assistance to individuals within the state who are victims of a natural, technological, or human caused disaster, as defined by RCW [38.52.010](#)(6). Such program may be integrated into and coordinated with disaster assistance plans and programs of the federal government which provide to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of assistance to individuals affected by a disaster. Further, such program may include, but shall not be limited to, grants, loans, or gifts of services, equipment, supplies, materials, or funds of the state, or any political subdivision thereof, to individuals who, as a result of a disaster, are in need of assistance and who meet standards of eligibility for disaster assistance established by the department of social and health services: PROVIDED, HOWEVER, That nothing herein shall be construed in any manner inconsistent with the provisions of Article VIII, section 5 or section 7 of the Washington state Constitution.

(10) The director shall appoint a state coordinator for radioactive and hazardous waste emergency response programs. The coordinator shall consult with the state radiation control officer in matters relating to radioactive materials. The duties of the state coordinator for radioactive and hazardous waste emergency response programs shall include:

- (a) Assessing the current needs and capabilities of state and local radioactive and hazardous waste emergency response teams on an ongoing basis;
- (b) Coordinating training programs for state and local officials for the purpose of updating skills relating to emergency mitigation, preparedness, response, and recovery;
- (c) Utilizing appropriate training programs such as those offered by the federal emergency management agency, the department of transportation and the environmental protection agency; and
- (d) Undertaking other duties in this area that are deemed appropriate by the director.

**RCW 38.52.050 Governor's general powers and duties.**

- (1) The governor, through the director, shall have general supervision and control of the emergency management functions in the department, and shall be responsible for the carrying out of the provisions of this chapter, and in the event of disaster beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.
- (2) In performing his or her duties under this chapter, the governor is authorized to cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of this state and of the nation.
- (3) In performing his or her duties under this chapter and to effect its policy and purpose, the governor is further authorized and empowered:
  - (a) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government;
  - (b) On behalf of this state, to enter into mutual aid arrangements with other states and territories, or provinces of the Dominion of Canada and to coordinate mutual aid interlocal agreements between political subdivisions of this state;
  - (c) To delegate any administrative authority vested in him under this chapter, and to provide for the subdelegation of any such authority;
  - (d) To appoint, with the advice of local authorities, metropolitan or regional area coordinators, or both, when practicable;
  - (e) To cooperate with the president and the heads of the armed forces, the emergency management agency of the United States, and other appropriate federal officers and agencies, and with the officers and agencies of other states in matters pertaining to the emergency management of the state and nation.

**RCW 38.52.070 Local organizations and joint local organizations authorized — Establishment, operation — Emergency powers, procedures.**

- (1) Each political subdivision of this state is hereby authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan and program: PROVIDED, That a political subdivision proposing such establishment shall submit its plan and program for emergency management to the state director and secure his or her recommendations thereon, and verification of consistency with the state comprehensive emergency management plan, in order that the plan of the local organization for emergency management may be coordinated with the plan and program of the state. Local comprehensive emergency management plans must specify the use of the incident command system for multiagency/multijurisdiction operations. No political subdivision may be required to include in its plan provisions for the emergency evacuation or relocation of residents in anticipation of nuclear attack. If the director's recommendations are adverse to the plan as submitted, and, if the local organization does not agree to the director's recommendations for modification to the proposal, the matter shall be referred to the council for final action. The director may authorize two or more political subdivisions to join in the establishment and operation of a joint local organization for emergency management as circumstances may warrant, in which case each political subdivision shall contribute to the cost of emergency management upon such fair and equitable basis as may be determined upon by the executive heads of the constituent subdivisions. If in any case the executive heads cannot agree upon the proper division of cost the matter shall be referred to the council for arbitration and its decision shall be final. When two or more political subdivisions join in the establishment and operation of a joint local organization for emergency management each shall pay its share of the cost into a special pooled fund to be administered by the treasurer of the most populous subdivision, which fund shall be known as the . . . emergency management fund. Each local organization or joint local organization for emergency management shall have a director who shall be appointed by the executive head of the political subdivision, and who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such executive officer or officers. In the case of a joint local organization for emergency management, the

director shall be appointed by the joint action of the executive heads of the constituent political subdivisions. Each local organization or joint local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

(2) In carrying out the provisions of this chapter each political subdivision, in which any disaster as described in RCW 38.52.020 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds.

**RCW 38.52.110      Use of existing services and facilities — Impressment of citizenry.**

(1) In carrying out the provisions of this chapter, the governor and the executive heads of the political subdivisions of the state are directed to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state, political subdivisions, and all other municipal corporations thereof including but not limited to districts and quasi municipal corporations organized under the laws of the state of Washington to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the governor and to the emergency management organizations of the state upon request notwithstanding any other provision of law.

(2) The governor, the chief executive of counties, cities and towns and the emergency management directors of local political subdivisions appointed in accordance with this chapter, in the event of a disaster, after proclamation by the governor of the existence of such disaster, shall have the power to command the service and equipment of as many citizens as considered necessary in the light of the disaster proclaimed: PROVIDED, That citizens so commandeered shall be entitled during the period of such service to all privileges, benefits and immunities as are provided by this chapter and federal and state emergency management regulations for registered emergency workers.

**RCW 38.52.150      Orders, rules, regulations — Enforcement — Availability — Penalty.**

(1) It shall be the duty of every organization for emergency management established pursuant to this chapter and of the officers thereof to execute and enforce such orders, rules, and regulations as may be made by the governor under authority of this chapter. Each such organization shall have available for inspection at its office all orders, rules, and regulations made by the governor, or under his or her authority.

(2)(a) Except as provided in (b) of this subsection, every violation of any rule, regulation, or order issued under the authority of this chapter is a misdemeanor.

(b) A second offense hereunder the same is a gross misdemeanor.

**RCW 39.04.010      Definitions.**

The term state shall include the state of Washington and all departments, supervisors, commissioners and agencies thereof.

The term municipality shall include every city, county, town, district or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

The term public work shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with the provisions of RCW 39.12.020. The term does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

The term contract shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid. However, a contract which is awarded from a small works roster need not be advertised.

**RCW 42.56.360      Health care.**

(1) The following health care information is exempt from disclosure under this chapter:

- (a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;
  - (b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;
  - (c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, and notifications or reports of adverse events or incidents made under RCW 70.56.020 or 70.56.040, regardless of which agency is in possession of the information and documents;
  - (d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;
  - (ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;
  - (iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;
  - (e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;
  - (f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170; and
  - (g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1).
- (2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

**RCW 42.56.520      Prompt responses required.**

Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (3) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

**RCW 42.56.540      Court protection of public records.**

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that

release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

#### **RCW 43.06.010      General powers and duties**

In addition to those prescribed by the Constitution, the governor may exercise the powers and perform the duties prescribed in this and the following sections:

- (1) The governor shall supervise the conduct of all executive and ministerial offices;
- (2) The governor shall see that all offices are filled, including as provided in RCW [42.12.070](#), and the duties thereof performed, or in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session;
- (3) The governor shall make the appointments and supply the vacancies mentioned in this title;
- (4) The governor is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States;
- (5) Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, the governor may direct the attorney general to appear on behalf of the state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;
- (6) The governor may require the attorney general or any prosecuting attorney to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;
- (7) The governor may require the attorney general to aid any prosecuting attorney in the discharge of the prosecutor's duties;
- (8) The governor may offer rewards, not exceeding one thousand dollars in each case, payable out of the state treasury, for information leading to the apprehension of any person convicted of a felony who has escaped from a state correctional institution or for information leading to the arrest of any person who has committed or is charged with the commission of a felony;
- (9) The governor shall perform such duties respecting fugitives from justice as are prescribed by law;
- (10) The governor shall issue and transmit election proclamations as prescribed by law;
- (11) The governor may require any officer or board to make, upon demand, special reports to the governor, in writing;
- (12) The governor may, after finding that a public disorder, disaster, energy emergency, or riot exists within this state or any part thereof which affects life, health, property, or the public peace, proclaim a state of emergency in the area affected, and the powers granted the governor during a state of emergency shall be effective only within the area described in the proclamation;
- (13) The governor may, after finding that there exists within this state an imminent danger of infestation of plant pests as defined in RCW [17.24.007](#) or plant diseases which seriously endangers the agricultural or horticultural industries of the state of Washington, or which seriously threatens life, health, or economic well-being, order emergency measures to prevent or abate the infestation or disease situation, which measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides;
- (14) On all compacts forwarded to the governor pursuant to RCW [9.46.360](#)(6), the governor is authorized and empowered to execute on behalf of the state compacts with federally recognized Indian tribes in the state of Washington pursuant to the federal Indian Gaming Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting class III gaming, as defined in the Act, on Indian lands.

#### **RCW 43.06.210      Proclamations — Generally — State of emergency.**

The proclamation of a state of emergency and other proclamations or orders issued by the governor pursuant to RCW 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter amended shall be in writing and shall be signed by the governor and shall then be filed with the secretary of state. The governor shall give as much public notice as practical through the news media of the issuance of proclamations or orders pursuant to RCW 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter amended. The state of emergency shall cease to exist upon the issuance of a proclamation of the governor declaring its termination: PROVIDED, That the governor must terminate said state of emergency proclamation when order has been restored in the area affected.

**RCW 43.06.220      State of emergency — Powers of governor pursuant to proclamation.**

(1) The governor after proclaiming a state of emergency and prior to terminating such, may, in the area described by the proclamation issue an order prohibiting:

(a) Any person being on the public streets, or in the public parks, or at any other public place during the hours declared by the governor to be a period of curfew;

(b) Any number of persons, as designated by the governor, from assembling or gathering on the public streets, parks, or other open areas of this state, either public or private;

(c) The manufacture, transfer, use, possession or transportation of a molotov cocktail or any other device, instrument or object designed to explode or produce uncontained combustion;

(d) The transporting, possessing or using of gasoline, kerosene, or combustible, flammable, or explosive liquids or materials in a glass or uncapped container of any kind except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use;

(e) The possession of firearms or any other deadly weapon by a person (other than a law enforcement officer) in a place other than that person's place of residence or business;

(f) The sale, purchase or dispensing of alcoholic beverages;

(g) The sale, purchase or dispensing of other commodities or goods, as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace;

(h) The use of certain streets, highways or public ways by the public; and

(i) Such other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.

(2) In imposing the restrictions provided for by RCW 43.06.010, and 43.06.200 through 43.06.270, the governor may impose them for such times, upon such conditions, with such exceptions and in such areas of this state he or she from time to time deems necessary.

(3) Any person willfully violating any provision of an order issued by the governor under this section is guilty of a gross misdemeanor.

**RCW 43.06.230      State of emergency — Destroying or damaging property or causing personal injury — Penalty.**

After the proclamation of a state of emergency as provided in RCW 43.06.010, any person who maliciously destroys or damages any real or personal property or maliciously injures another is guilty of a class B felony and upon conviction thereof shall be imprisoned in a state correctional facility for not less than two years nor more than ten years.

**RCW 43.06.240      State of emergency — Disorderly conduct after emergency proclaimed — Penalty.**

After the proclamation of a state of emergency pursuant to RCW 43.06.010, every person who:

(1) Wilfully causes public inconvenience, annoyance, or alarm, or recklessly creates a risk thereof, by:

(a) engaging in fighting or in violent, tumultuous, or threatening behavior; or

(b) making an unreasonable noise or an offensively coarse utterance, gesture, or display, or addressing abusive language to any person present; or

(c) dispersing any lawful procession or meeting of persons, not being a peace officer of this state and without lawful authority; or

(d) creating a hazardous or physically offensive condition which serves no legitimate purpose; or

(2) Engages with at least one other person in a course of conduct as defined in subsection (1) of this section which is likely to cause substantial harm or serious inconvenience, annoyance, or alarm, and refuses or knowingly fails to obey an order to disperse made by a peace officer shall be guilty of disorderly conduct and be punished by imprisonment in the county jail for not more than one year or fined not more than one thousand dollars or by both fine and imprisonment.

**RCW 43.06.250      State of emergency — Refusing to leave public way or property when ordered — Penalty.**

Any person upon any public way or any public property, within the area described in the state of emergency, who is directed by a public official to leave the public way or public property and refuses to do so shall be guilty of a misdemeanor.

**RCW 43.17.020      Chief executive officers — Appointment.**

There shall be a chief executive officer of each department to be known as: (1) The secretary of social and health services, (2) the director of ecology, (3) the director of labor and industries, (4) the director of agriculture, (5) the director of fish and wildlife, (6) the secretary of transportation, (7) the director of licensing, (8) the director of general administration, (9) the director of community, trade, and economic development, (10) the director of veterans affairs, (11) the director of revenue, (12) the director of retirement systems, (13) the secretary of corrections, (14) the secretary of health, (15) the director of financial institutions, (16) the director of the department of archaeology and historic preservation, and (17) the director of early learning.

Such officers, except the director of fish and wildlife, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director of fish and wildlife shall be appointed by the fish and wildlife commission as prescribed by RCW 77.04.055.

**RCW 43.20.030      State board of health — Members — Chairman — Staff support — Executive director, confidential secretary — Compensation and travel expenses of members**

The state board of health shall be composed of ten members. These shall be the secretary or the secretary's designee and nine other persons to be appointed by the governor, including four persons experienced in matters of health and sanitation, one of whom is a health official from a federally recognized tribe; an elected city official who is a member of a local health board; an elected county official who is a member of a local health board; a local health officer; and two persons representing the consumers of health care. Before appointing the city official, the governor shall consider any recommendations submitted by the association of Washington cities. Before appointing the county official, the governor shall consider any recommendations submitted by the Washington state association of counties. Before appointing the local health officer, the governor shall consider any recommendations submitted by the Washington state association of local public health officials. Before appointing one of the two consumer representatives, the governor shall consider any recommendations submitted by the state council on aging. The chairman shall be selected by the governor from among the nine appointed members. The department of health shall provide necessary technical staff support to the board. The board may employ an executive director and a confidential secretary, each of whom shall be exempt from the provisions of the state civil service law, chapter [41.06](#) RCW.

Members of the board shall be compensated in accordance with RCW [43.03.240](#) and shall be reimbursed for their travel expenses in accordance with RCW [43.03.050](#) and [43.03.060](#).

**RCW 43.20.050      Powers and duties of state board of health — State public health report — Delegation of authority — Enforcement of rules.**

(1) The state board of health shall provide a forum for the development of public health policy in Washington state. It is authorized to recommend to the secretary means for obtaining appropriate citizen and professional involvement in all public health policy formulation and other matters related to the powers and duties of the department. It is further empowered to hold hearings and explore ways to improve the health status of the citizenry.

(a) At least every five years, the state board shall convene regional forums to gather citizen input on public health issues.

(b) Every two years, in coordination with the development of the state biennial budget, the state board shall prepare the state public health report that outlines the health priorities of the ensuing biennium. The report shall:

(i) Consider the citizen input gathered at the forums;

(ii) Be developed with the assistance of local health departments;

(iii) Be based on the best available information collected and reviewed according to RCW 43.70.050 and recommendations from the \*council;

(iv) Be developed with the input of state health care agencies. At least the following directors of state agencies shall provide timely recommendations to the state board on suggested health priorities for the ensuing biennium: The secretary of social and health services, the health care authority administrator, the insurance commissioner, the superintendent of public instruction, the director of labor and industries, the director of ecology, and the director of agriculture;

(v) Be used by state health care agency administrators in preparing proposed agency budgets and executive request legislation;

(vi) Be submitted by the state board to the governor by January 1 of each even-numbered year for adoption by the governor. The governor, no later than March 1 of that year, shall approve, modify, or disapprove the state public health report.

(c) In fulfilling its responsibilities under this subsection, the state board may create ad hoc committees or other such committees of limited duration as necessary.

(2) In order to protect public health, the state board of health shall:

(a) Adopt rules necessary to assure safe and reliable public drinking water and to protect the public health. Such rules shall establish requirements regarding:

(i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;

(ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;

(iii) Public water system management and reporting requirements;

(iv) Public water system planning and emergency response requirements;

(v) Public water system operation and maintenance requirements;

(vi) Water quality, reliability, and management of existing but inadequate public water systems; and

(vii) Quality standards for the source or supply, or both source and supply, of water for bottled water plants.

(b) Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of wastes, solid and liquid, including but not limited to sewage, garbage, refuse, and other environmental contaminants; adopt standards and procedures governing the design, construction, and operation of sewage, garbage, refuse and other solid waste collection, treatment, and disposal facilities;

(c) Adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, cleanliness and space in all types of public facilities including but not limited to food service establishments, schools, institutions, recreational facilities and transient accommodations and in places of work;

(d) Adopt rules for the imposition and use of isolation and quarantine;

(e) Adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness, and rules governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as admit of and may best be controlled by universal rule; and

(f) Adopt rules for accessing existing data bases for the purposes of performing health related research.

(3) The state board may delegate any of its rule-adopting authority to the secretary and rescind such delegated authority.

(4) All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township thereof, shall enforce all rules adopted by the state board of health. In the event of failure or refusal on the part of any member of such boards or any other official or person mentioned in this section to so act, he shall be subject to a fine of not less than fifty dollars, upon first conviction, and not less than one hundred dollars upon second conviction.

(5) The state board may advise the secretary on health policy issues pertaining to the department of health and the state.

#### **RCW 43.23.070 Powers and duties of state veterinarian.**

The state veterinarian shall exercise all the powers and perform all duties prescribed by law relating to diseases among animals and the quarantine and destruction of diseased animals.

The state veterinarian shall enforce and supervise the administration of all laws relating to meat inspection, the prevention, detection, control and eradication of diseases of animals, and all other matters relative to the diseases of livestock and their effect upon the public health.

(1) There is hereby created a department of state government to be known as the department of health. The department shall be vested with all powers and duties transferred to it by chapter 9, Laws of 1989 1st ex. sess. and such other powers and duties as may be authorized by law. The main administrative office of the department shall be located in the city of Olympia. The secretary may establish administrative facilities in other locations, if deemed necessary for the efficient operation of the department, and if consistent with the principles set forth in subsection (2) of this section.

(2) The department of health shall be organized consistent with the goals of providing state government with a focus in health and serving the people of this state. The legislature recognizes that the secretary needs sufficient organizational flexibility to carry out the department's various duties. To the extent practical, the secretary shall consider the following organizational principles:

- (a) Clear lines of authority which avoid functional duplication within and between subelements of the department;
- (b) A clear and simplified organizational design promoting accessibility, responsiveness, and accountability to the legislature, the consumer, and the general public;
- (c) Maximum span of control without jeopardizing adequate supervision;
- (d) A substate or regional organizational structure for the department's health service delivery programs and activities that encourages joint working agreements with local health departments and that is consistent between programs;
- (e) Decentralized authority and responsibility, with clear accountability;
- (f) A single point of access for persons receiving like services from the department which would limit the number of referrals between divisions.

(3) The department shall provide leadership and coordination in identifying and resolving threats to the public health by:

- (a) Working with local health departments and local governments to strengthen the state and local governmental partnership in providing public protection;
- (b) Developing intervention strategies;
- (c) Providing expert advice to the executive and legislative branches of state government;
- (d) Providing active and fair enforcement of rules;
- (e) Working with other federal, state, and local agencies and facilitating their involvement in planning and implementing health preservation measures;
- (f) Providing information to the public; and
- (g) Carrying out such other related actions as may be appropriate to this purpose.

(4) In accordance with the administrative procedure act, chapter 34.05 RCW, the department shall ensure an opportunity for consultation, review, and comment by the department's clients before the adoption of standards, guidelines, and rules.

(5) Consistent with the principles set forth in subsection (2) of this section, the secretary may create such administrative divisions, offices, bureaus, and programs within the department as the secretary deems necessary. The secretary shall have complete charge of and supervisory powers over the department, except where the secretary's authority is specifically limited by law.

(6) The secretary shall appoint such personnel as are necessary to carry out the duties of the department in accordance with chapter 41.06 RCW.

(7) The secretary shall appoint the state health officer and such deputy secretaries, assistant secretaries, and other administrative positions as deemed necessary consistent with the principles set forth in subsection (2) of this section. All persons who administer the necessary divisions, offices, bureaus, and programs, and five additional employees shall be exempt from the provisions of chapter 41.06 RCW. The officers and employees appointed under this subsection shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for officers exempt from the state civil service law.

(8) The secretary shall administer family services and programs to promote the state's policy as provided in RCW 74.14A.025.

**RCW 43.70.030        Secretary of health.**

The executive head and appointing authority of the department shall be the secretary of health. The secretary shall be appointed by, and serve at the pleasure of, the governor in accordance with RCW 43.17.020. The secretary shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040.

**RCW 43.70.100        Reports of violations by secretary — Duty to institute proceedings — Notice to alleged violator.**

(1) It shall be the duty of each assistant attorney general, prosecuting attorney, or city attorney to whom the secretary reports any violation of chapter 43.20 or 43.70 RCW, or regulations promulgated under them, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law.

(2) Before any violation of chapter 43.20 or 43.70 RCW is reported by the secretary to the prosecuting attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his or her views to the secretary, either orally or in writing, with regard to such contemplated proceeding.

**RCW 43.70.130        Powers and duties of secretary — General.**

The secretary of health shall:

- (1) Exercise all the powers and perform all the duties prescribed by law with respect to public health and vital statistics;
- (2) Investigate and study factors relating to the preservation, promotion, and improvement of the health of the people, the causes of morbidity and mortality, and the effects of the environment and other conditions upon the public health, and report the findings to the state board of health for such action as the board determines is necessary;
- (3) Strictly enforce all laws for the protection of the public health and the improvement of sanitary conditions in the state, and all rules, regulations, and orders of the state board of health;
- (4) Enforce the public health laws of the state and the rules and regulations promulgated by the department or the board of health in local matters, when in its opinion an emergency exists and the local board of health has failed to act with sufficient promptness or efficiency, or is unable for reasons beyond its control to act, or when no local board has been established, and all expenses so incurred shall be paid upon demand of the secretary of the department of health by the local health department for which such services are rendered, out of moneys accruing to the credit of the municipality or the local health department in the current expense fund of the county;
- (5) Investigate outbreaks and epidemics of disease that may occur and advise local health officers as to measures to be taken to prevent and control the same;
- (6) Exercise general supervision over the work of all local health departments and establish uniform reporting systems by local health officers to the state department of health;
- (7) Have the same authority as local health officers, except that the secretary shall not exercise such authority unless the local health officer fails or is unable to do so, or when in an emergency the safety of the public health demands it, or by agreement with the local health officer or local board of health;
- (8) Cause to be made from time to time, personal health and sanitation inspections at state owned or contracted institutions and facilities to determine compliance with sanitary and health care standards as adopted by the department, and require the governing authorities thereof to take such action as will conserve the health of all persons connected therewith, and report the findings to the governor;
- (9) Review and approve plans for public water system design, engineering, operation, maintenance, financing, and emergency response, as required under state board of health rules;
- (10) Take such measures as the secretary deems necessary in order to promote the public health, to establish or participate in the establishment of health educational or training activities, and to provide funds for and to authorize the attendance and participation in such activities of employees of the state or local health departments and other individuals engaged in programs related to or part of the public health programs of the local health departments or the state department of health. The secretary is also authorized to accept any funds from the federal government or any public or private agency made available for health education training purposes and to conform with such requirements as are necessary in order to receive such funds; and

(11) Establish and maintain laboratory facilities and services as are necessary to carry out the responsibilities of the department.

**RCW 43.70.170      Threat to public health — Investigation, examination or sampling of articles or conditions constituting — Access — Subpoena power.**

The secretary on his or her own motion or upon the complaint of any interested party, may investigate, examine, sample or inspect any article or condition constituting a threat to the public health including, but not limited to, outbreaks of communicable diseases, food poisoning, contaminated water supplies, and all other matters injurious to the public health. When not otherwise available, the department may purchase such samples or specimens as may be necessary to determine whether or not there exists a threat to the public health. In furtherance of any such investigation, examination or inspection, the secretary or the secretary's authorized representative may examine that portion of the ledgers, books, accounts, memorandums, and other documents and other articles and things used in connection with the business of such person relating to the actions involved.

For purposes of such investigation, the secretary or the secretary's representative shall at all times have free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities or any other place. The secretary may also, for the purposes of such investigation, issue subpoenas to compel the attendance of witnesses, as provided for in RCW 43.70.090 or the production of books and documents anywhere in the state.

**RCW 43.70.180      Threat to public health — Order prohibiting sale or disposition of food or other items pending investigation.**

Pending the results of an investigation provided for under RCW 43.70.170, the secretary may issue an order prohibiting the disposition or sale of any food or other item involved in the investigation. The order of the secretary shall not be effective for more than fifteen days without the commencement of a legal action as provided for under RCW 43.70.190.

**RCW 43.70.190      Violations — Injunctions and legal proceedings authorized.**

The secretary of health or local health officer may bring an action to enjoin a violation or the threatened violation of any of the provisions of the public health laws of this state or any rules or regulation made by the state board of health or the department of health pursuant to said laws, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county. Upon the filing of any action, the court may, upon a showing of an immediate and serious danger to residents constituting an emergency, issue a temporary injunctive order ex parte.

**RCW 43.70.200      Enforcement of health laws and state or local rules and regulations upon request of local health officer.**

Upon the request of a local health officer, the secretary of health is hereby authorized and empowered to take legal action to enforce the public health laws and rules and regulations of the state board of health or local rules and regulations within the jurisdiction served by the local health department, and may institute any civil legal proceeding authorized by the laws of the state of Washington, including a proceeding under Title 7 RCW.

**RCW 70.02.005      Findings.**

The legislature finds that:

(1) Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests.

(2) Patients need access to their own health care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

(3) In order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information.

(4) Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

(5) The movement of patients and their health care information across state lines, access to and exchange of health care

information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

## **RCW 70.02.010        Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

- (a) Statutory, regulatory, fiscal, medical, or scientific standards;
- (b) A private or public program of payments to a health care provider; or
- (c) Requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(3) "Federal, state, or local law enforcement authorities" means an officer of any agency or authority in the United States, a state, a tribe, a territory, or a political subdivision of a state, a tribe, or a territory who is empowered by law to: (a) Investigate or conduct an official inquiry into a potential criminal violation of law; or (b) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law.

(4) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(5) "Health care" means any care, service, or procedure provided by a health care provider:

- (a) To diagnose, treat, or maintain a patient's physical or mental condition; or
- (b) That affects the structure or any function of the human body.

(6) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(7) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

(8) "Health care operations" means any of the following activities of a health care provider, health care facility, or third-party payor to the extent that the activities are related to functions that make an entity a health care provider, a health care facility, or a third-party payor:

(a) Conducting: Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, if the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance and third-party payor performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of nonhealth care professionals, accreditation, certification, licensing, or credentialing activities;

(c) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care, including stop-loss insurance and excess of loss insurance, if any applicable legal requirements are met;

(d) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(e) Business planning and development, such as conducting cost-management and planning-related analyses related to

managing and operating the health care facility or third-party payor, including formulary development and administration, development, or improvement of methods of payment or coverage policies; and

(f) Business management and general administrative activities of the health care facility, health care provider, or third-party payor including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this chapter;

(ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that health care information is not disclosed to such policy holder, plan sponsor, or customer;

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of a health care provider, health care facility, or third-party payor with another health care provider, health care facility, or third-party payor or an entity that following such activity will become a health care provider, health care facility, or third-party payor, and due diligence related to such activity; and

(v) Consistent with applicable legal requirements, creating deidentified health care information or a limited dataset and fund-raising for the benefit of the health care provider, health care facility, or third-party payor.

(9) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(10) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(11) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(12) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(13) "Payment" means:

(a) The activities undertaken by:

(i) A third-party payor to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits by the third-party payor; or

(ii) A health care provider, health care facility, or third-party payor, to obtain or provide reimbursement for the provision of health care; and

(b) The activities in (a) of this subsection that relate to the patient to whom health care is provided and that include, but are not limited to:

(i) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance, and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, and concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following health care information relating to collection of premiums or reimbursement:

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

(F) Name and address of the health care provider, health care facility, and/or third-party payor.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(15) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

(16) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan; or a state or federal health benefit program.

(17) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another.

#### **RCW 70.02.020          Disclosure by health care provider.**

(1) Except as authorized in RCW 70.02.050, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A patient has a right to receive an accounting of disclosures of health care information made by a health care provider or a health care facility in the six years before the date on which the accounting is requested, except for disclosures:

(a) To carry out treatment, payment, and health care operations;

(b) To the patient of health care information about him or her;

(c) Incident to a use or disclosure that is otherwise permitted or required;

(d) Pursuant to an authorization where the patient authorized the disclosure of health care information about himself or herself;

(e) Of directory information;

(f) To persons involved in the patient's care;

(g) For national security or intelligence purposes if an accounting of disclosures is not permitted by law;

(h) To correctional institutions or law enforcement officials if an accounting of disclosures is not permitted by law; and

(i) Of a limited data set that excludes direct identifiers of the patient or of relatives, employers, or household members of the patient.

#### **RCW 70.02.050          Disclosure without patient's authorization.**

(1) A health care provider or health care facility may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(d) To any person if the health care provider or health care facility reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider or facility to so disclose;

(e) To immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(f) To a health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(k) To fire, police, sheriff, or another public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(l) To federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(m) To another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(8) (a) and (b); or

(n) For payment.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

(i) The name of the patient;

(ii) The patient's residence;

(iii) The patient's sex;

(iv) The patient's age;

(v) The patient's condition;

(vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;

(vii) Whether the patient was conscious when admitted;

(viii) The name of the health care provider making the determination in (c)(v), (vi), and (vii) of this subsection;

(ix) Whether the patient has been transferred to another facility; and

(x) The patient's discharge time and date;

(d) To county coroners and medical examiners for the investigations of deaths;

(e) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter.

#### **RCW 70.05.010        Definitions.**

For the purposes of chapters 70.05 and 70.46 RCW and unless the context thereof clearly indicates to the contrary:

(1) "Local health departments" means the county or district which provides public health services to persons within the area.

(2) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department.

(3) "Local board of health" means the county or district board of health.

(4) "Health district" means all the territory consisting of one or more counties organized pursuant to the provisions of chapters 70.05 and 70.46 RCW.

(5) "Department" means the department of health.

**RCW 70.05.030      Counties — Local health board — Jurisdiction.**

In counties without a home rule charter, the board of county commissioners shall constitute the local board of health, unless the county is part of a health district pursuant to chapter 70.46 RCW. The jurisdiction of the local board of health shall be coextensive with the boundaries of said county. The board of county commissioners may, at its discretion, adopt an ordinance expanding the size and composition of the board of health to include elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. An ordinance adopted under this section shall include provisions for the appointment, term, and compensation, or reimbursement of expenses.

**RCW 70.05.035      Home rule charter — Local board of health.**

In counties with a home rule charter, the county legislative authority shall establish a local board of health and may prescribe the membership and selection process for the board. The county legislative authority may appoint to the board of health elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. The county legislative authority shall specify the appointment, term, and compensation or reimbursement of expenses. The jurisdiction of the local board of health shall be coextensive with the boundaries of the county. The local health officer, as described in RCW 70.05.050, shall be appointed by the official designated under the provisions of the county charter. The same official designated under the provisions of the county charter may appoint an administrative officer, as described in RCW 70.05.045.

**RCW 70.05.040      Local board of health — Chair — Administrative officer — Vacancies.**

The local board of health shall elect a chair and may appoint an administrative officer. A local health officer shall be appointed pursuant to RCW 70.05.050. Vacancies on the local board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. At the first meeting of the local board of health, the members shall elect a chair to serve for a period of one year.

**RCW 70.05.050      Local health officer — Qualifications — Employment of personnel — Salary and expenses.**

The local health officer shall be an experienced physician licensed to practice medicine and surgery or osteopathic medicine and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the office of local health officer. No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal. The local health officer shall act as executive secretary to, and administrative officer for the local board of health and shall also be empowered to employ such technical and other personnel as approved by the local board of health except where the local board of health has appointed an administrative officer under RCW 70.05.040. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. In home rule counties that are part of a health district under this chapter and chapter 70.46 RCW the local health officer and administrative officer shall be appointed by the local board of health.

**RCW 70.05.051      Local health officer — Qualifications.**

The following persons holding licenses as required by RCW 70.05.050 shall be deemed qualified to hold the position of local health officer:

(1) Persons holding the degree of master of public health or its equivalent;

(2) Persons not meeting the requirements of subsection (1) of this section, who upon August 11, 1969 are currently employed in this state as a local health officer and whom the secretary of social and health services recommends in writing to the local board of health as qualified; and

(3) Persons qualified by virtue of completing three years of service as a provisionally qualified officer pursuant to RCW 70.05.053 through 70.05.055.

**RCW 70.05.060      Powers and duties of local board of health.**

Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:

(1) Enforce through the local health officer or the administrative officer appointed under RCW 70.05.040, if any, the public health statutes of the state and rules promulgated by the state board of health and the secretary of health;

(2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;

(3) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;

(4) Provide for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department;

(5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;

(6) Make such reports to the state board of health through the local health officer or the administrative officer as the state board of health may require; and

(7) Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules of the state board of health: PROVIDED, That such fees for services shall not exceed the actual cost of providing any such services.

**RCW 70.05.070            Local health officer — Powers and duties.**

The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030, the confidentiality provisions in RCW 70.24.105 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department.

**RCW 70.05.100            Determination of character of disease.**

In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state department of health can be notified, and then the opinion of the executive officer of the state department of health, or any physician he or she may appoint to examine such case, shall be final.

**RCW 70.05.120            Violations — Remedies — Penalties.**

(1) Any local health officer or administrative officer appointed under RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.05

RCW, and the rules and regulations of the state board of health adopted thereunder.

(2) Any member of a local board of health who shall violate any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars.

(3) Any physician who shall refuse or neglect to report to the proper health officer or administrative officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

(4) Any person violating any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment.

**RCW 70.08.010 Combined city-county health departments — Establishment.**

Any city with one hundred thousand or more population and the county in which it is located, are authorized, as shall be agreed upon between the respective governing bodies of such city and said county, to establish and operate a combined city and county health department, and to appoint the director of public health.

**RCW 70.08.020 Director of public health — Powers and duties.**

The director of public health is authorized to and shall exercise all powers and perform all duties by law vested in the local health officer.

**RCW 70.08.030 Qualifications.**

Notwithstanding any provisions to the contrary contained in any city or county charter, the director of public health, under this chapter shall meet as a minimum one of the following standards of educational achievement and vocational experience to be qualified for appointment to the office:

(1) Bachelor's degree in business administration, public administration, hospital administration, management, nursing, environmental health, epidemiology, public health, or its equivalent and five years of experience in administration in a community-related field; or

(2) A graduate degree in any of the fields listed in subsection (1) of this section, or in medicine or osteopathic medicine and surgery, plus three years of administrative experience in a community-related field.

The director shall not engage in the private practice of the director's profession during such tenure of office and shall not be included in the classified civil service of the said city or the said county.

If the director of public health does not meet the qualifications of a health officer or a physician under RCW 70.05.050, the director shall employ a person so qualified to advise the director on medical or public health matters.

**RCW 70.08.040 Director of public health — Appointment.**

Notwithstanding any provisions to the contrary contained in any city or county charter, where a combined department is established under this chapter, the director of public health under this chapter shall be appointed by the county executive of the county and the mayor of the city. The appointment shall be effective only upon a majority vote confirmation of the legislative authority of the county and the legislative authority of the city. The director may be removed by the county executive of the county, after consultation with the mayor of the city, upon filing a statement of reasons therefor with the legislative authorities of the county and the city.

**RCW 70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases — Exchange of medical information.**

(1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this chapter.

(2) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is

performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is positive be disclosed. This protection against disclosure of test subject, diagnosis, or treatment also applies to any information relating to diagnosis of or treatment for HIV infection and for any other confirmed sexually transmitted disease. The following persons, however, may receive such information:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(b) Any person who secures a specific release of test results or information relating to HIV or confirmed diagnosis of or treatment for any other sexually transmitted disease executed by the subject or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(c) The state public health officer, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(d) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(e) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, provided that such record was obtained by means of court ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(f) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure shall: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services, including but not limited to the written statement set forth in subsection (5) of this section;

(g) \*Local law enforcement agencies to the extent provided in RCW 70.24.034;

(h) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(i) A law enforcement officer, fire fighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(j) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection shall be confidential and shall not be released or available to persons who are not involved in handling or determining medical claims payment; and

(k) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency; this information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(e) of this section, shall be governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by department of corrections

health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370, shall be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure shall also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member shall also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition may not be disclosed to a staff person except as provided in subsection (2)(i) of this section and RCW 70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under subsection (2)(i) of this section and RCW 70.24.340(4).

(5) Whenever disclosure is made pursuant to this section, except for subsections (2)(a) and (6) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(6) The requirements of this section shall not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor shall they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(7) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing.

#### **RCW 70.28.005      Health officials, broad powers to protect public health.**

(1) Tuberculosis has been and continues to be a threat to the public's health in the state of Washington.

(2) While it is important to respect the rights of individuals, the legitimate public interest in protecting the public health and welfare from the spread of a deadly infectious disease outweighs incidental curtailment of individual rights that may occur in implementing effective testing, treatment, and infection control strategies.

(3) To protect the public's health, it is the intent of the legislature that local health officials provide culturally sensitive and medically appropriate early diagnosis, treatment, education, and follow-up to prevent tuberculosis. Further, it is imperative that public health officials and their staff have the necessary authority and discretion to take actions as are necessary to protect the

health and welfare of the public, subject to the constitutional protection required under the federal and state constitutions. Nothing in this chapter shall be construed as in any way limiting the broad powers of health officials to act as necessary to protect the public health.

**RCW 70.28.031 Powers and duties of health officers.**

Each health officer is hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of tuberculosis in the infectious stages within his or her jurisdiction and to ascertain the sources of such infections. In carrying out such investigations, each health officer is hereby invested with full powers of inspection, examination, treatment, and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for treatment or periodic follow-up examinations and is hereby directed:

- (a) To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and to isolate and treat or isolate, treat, and quarantine such persons, whenever deemed necessary for the protection of the public health.
- (b) To make such examinations as deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations.
- (c) Follow local rules and regulations regarding examinations, treatment, quarantine, or isolation, and all rules, regulations, and orders of the state board and of the department in carrying out such examination, treatment, quarantine, or isolation.
- (d) Whenever the health officer shall determine on reasonable grounds that an examination or treatment of any person is necessary for the preservation and protection of the public health, he or she shall make an examination order in writing, setting forth the name of the person to be examined, the time and place of the examination, the treatment, and such other terms and conditions as may be necessary to protect the public health. Nothing contained in this subdivision shall be construed to prevent any person whom the health officer determines should have an examination or treatment for infectious tuberculosis from having such an examination or treatment made by a physician of his or her own choice who is licensed to practice osteopathic medicine and surgery under chapter [18.57](#) RCW or medicine and surgery under chapter [18.71](#) RCW under such terms and conditions as the health officer shall determine on reasonable grounds to be necessary to protect the public health.
- (e) Whenever the health officer shall determine that quarantine, treatment, or isolation in a particular case is necessary for the preservation and protection of the public health, he or she shall make an order to that effect in writing, setting forth the name of the person, the period of time during which the order shall remain effective, the place of treatment, isolation, or quarantine, and such other terms and conditions as may be necessary to protect the public health.
- (f) Upon the making of an examination, treatment, isolation, or quarantine order as provided in this section, a copy of such order shall be served upon the person named in such order.
- (g) Upon the receipt of information that any examination, treatment, quarantine, or isolation order, made and served as herein provided, has been violated, the health officer shall advise the prosecuting attorney of the county in which such violation has occurred, in writing, and shall submit to such prosecuting attorney the information in his or her possession relating to the subject matter of such examination, treatment, isolation, or quarantine order, and of such violation or violations thereof.
- (h) Any and all orders authorized under this section shall be made by the health officer or his or her tuberculosis control officer.
- (i) Nothing in this chapter shall be construed to abridge the right of any person to rely exclusively on spiritual means alone through prayer to treat tuberculosis in accordance with the tenets and practice of any well-recognized church or religious denomination, nor shall anything in this chapter be deemed to prohibit a person who is inflicted with tuberculosis from being isolated or quarantined in a private place of his own choice, provided, it is approved by the local health officer, and all laws, rules and regulations governing control, sanitation, isolation, and quarantine are complied with.

**RCW 70.28.032 Due process standards for testing, treating, detaining — Reporting requirements — Training and scope for skin test administration.**

- (1) The state board of health shall adopt rules establishing the requirements for:

- (a) Reporting confirmed or suspected cases of tuberculosis by health care providers and reporting of laboratory results consistent with tuberculosis by medical test sites;
- (b) Due process standards for health officers exercising their authority to involuntarily detain, test, treat, or isolate persons with suspected or confirmed tuberculosis under RCW [70.28.031](#) and [70.05.070](#) that provide for release from any involuntary detention, testing, treatment, or isolation as soon as the health officer determines the patient no longer represents a risk to the

public's health;

(c) Training of persons to perform tuberculosis skin testing and to administer tuberculosis medications.

(2) Notwithstanding any other provision of law, persons trained under subsection (1)(c) of this section may perform skin testing and administer medications if doing so as part of a program established by a state or local health officer to control tuberculosis.

**RCW 70.28.033 Treatment, isolation, or examination order of health officer — Violation — Penalty.**

Inasmuch as the order provided for by RCW [70.28.031](#) is for the protection of the public health, any person who, after service upon him or her of an order of a health officer directing his or her treatment, isolation, or examination as provided for in RCW [70.28.031](#), violates or fails to comply with the same or any provision thereof, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any and all other penalties which may be imposed by law upon such conviction, may be ordered by the court confined until such order of such health officer shall have been fully complied with or terminated by such health officer, but not exceeding six months from the date of passing judgment upon such conviction: PROVIDED, That the court, upon suitable assurances that such order of such health officer will be complied with, may place any person convicted of a violation of such order of such health officer upon probation for a period not to exceed two years, upon condition that the said order of said health officer be fully complied with: AND PROVIDED FURTHER, That upon any subsequent violation of such order of such health officer, such probation shall be terminated and confinement as herein provided ordered by the court.

**RCW 70.28.035 Order of health officer — Refusal to obey — Application for superior court order.**

In addition to the proceedings set forth in RCW [70.28.031](#), where a local health officer has reasonable cause to believe that an individual has tuberculosis as defined in the rules and regulations of the state board of health, and the individual refuses to obey the order of the local health officer to appear for an initial examination or a follow-up examination or an order for treatment, isolation, or quarantine, the health officer may apply to the superior court for an order requiring the individual to comply with the order of the local health officer.

**RCW 70.28.037 Superior court order for confinement of individuals having active tuberculosis.**

Where it has been determined after an examination as prescribed in this chapter that an individual has active tuberculosis, upon application to the superior court by the local health officer, the superior court shall order the sheriff to transport the individual to a designated facility for isolation, treatment, and care until such time as the local health officer or designee determines that the patient's condition is such that it is safe for the patient to be discharged from the facility.

**RCW 70.46.020 Districts of two or more counties — Health board — Membership — Chair.**

Health districts consisting of two or more counties may be created whenever two or more boards of county commissioners shall by resolution establish a district for such purpose. Such a district shall consist of all the area of the combined counties. The district board of health of such a district shall consist of not less than five members for districts of two counties and seven members for districts of more than two counties, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners of each county within the district, and shall have a jurisdiction coextensive with the combined boundaries. The boards of county commissioners may by resolution or ordinance provide for elected officials from cities and towns and persons other than elected officials as members of the district board of health so long as persons other than elected officials do not constitute a majority. A resolution or ordinance adopted under this section must specify the provisions for the appointment, term, and compensation, or reimbursement of expenses. Any multicounty health district existing on \*the effective date of this act shall continue in existence unless and until changed by affirmative action of all boards of county commissioners or one or more counties withdraws [withdraw] pursuant to RCW [70.46.090](#).

At the first meeting of a district board of health the members shall elect a chair to serve for a period of one year.

**RCW 70.46.031 Districts of one county — Health board — Membership.**

A health district to consist of one county may be created whenever the county legislative authority of the county shall pass a resolution or ordinance to organize such a health district under chapter [70.05](#) RCW and this chapter.

The resolution or ordinance may specify the membership, representation on the district health board, or other matters relative to the formation or operation of the health district. The county legislative authority may appoint elected officials from cities and towns and persons other than elected officials as members of the health district board so long as persons other than elected officials do not constitute a majority.

Any single county health district existing on \*the effective date of this act shall continue in existence unless and until changed by affirmative action of the county legislative authority.

**RCW 70.46.060      District health board — Powers and duties.**

The district board of health shall constitute the local board of health for all the territory included in the health district, and shall supersede and exercise all the powers and perform all the duties by law vested in the county board of health of any county included in the health district.

**Washington Administrative Code**

**WAC 16-08-022      Consolidation of proceedings.**

Without affecting the department's discretion to otherwise consolidate adjudicative proceedings, the department may consolidate an emergency adjudicative proceeding with an adjudicative proceeding on the merits.

**WAC 16-08-151      Emergency adjudicative proceedings.**

(1) Pursuant to RCW [34.05.479](#), the department shall use emergency adjudicative proceedings for the suspension or cancellation of authority in situations involving an immediate danger to the public health, safety, or welfare requiring immediate action by the department. Such situations shall include:

(a) Failure to possess required insurance, bonding or other security.

(b) Health, safety, or welfare violations when the violation involves an immediate danger to the public health, safety, or welfare, including, but not limited to, decisions by the department to condemn horticultural plants under chapter [15.13](#) RCW; or to condemn infested or infected articles under chapter [15.08](#) RCW; or to issue stop sale, use, or removal order under chapter [15.49](#) RCW; or to quarantine apiaries under chapter [15.60](#) RCW; or to quarantine animals under chapter [16.36](#) RCW; or to impound infested, infected, or regulated articles pursuant to chapter [17.24](#) RCW; or to close food processing facilities under chapter [69.07](#) RCW; or under rules or regulations of the director adopted pursuant to such laws.

(2) The summary order shall include a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health, safety, or welfare. The order shall be effective when entered. Service of the order shall be made pursuant to WAC [10-08-110](#). The order shall also give the affected party five days from service of the order to request an adjudicative proceeding on the order, or, in the alternative, the director may in the order automatically establish a date affording the affected party the opportunity to present any defense concerning why the summary order is incorrect.

(3) A decision made upon the emergency adjudicative proceeding shall be expressed in a written order which shall be served on all parties within five days after its entry. This written order is a final order.

(4) The summary order shall be effective pending disposition on the merits of the denial, suspension or revocation of authority.

**WAC 246-100-011      Definitions.**

The following definitions shall apply in the interpretation and enforcement of chapter [246-100](#) WAC:

(1) "Acquired immunodeficiency syndrome (AIDS)" means illness, disease, or conditions defined and described by the Centers for Disease Control, U.S. Public Health Service, Morbidity and Mortality Weekly Report (MMWR), December 18, 1992, Volume 41, Number RR-17. A copy of this publication is available for review at the department and at each local health department.

(2) "AIDS counseling" means counseling directed toward:

(a) Increasing the individual's understanding of acquired immunodeficiency syndrome; and

(b) Assessing the individual's risk of HIV acquisition and transmission; and

(c) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection.

(3) "Anonymous HIV testing" means that the name or identity of the individual tested for HIV will not be recorded or linked to the HIV test result. However, once the individual testing positive receives HIV health care or treatment services, reporting of the identity of the individual to the state or local public health officer is required.

(4) "Board" means the Washington state board of health.

(5) "Case" means a person, alive or dead, having been diagnosed to have a particular disease or condition by a health care

provider with diagnosis based on clinical or laboratory criteria or both.

(6) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter [74.15](#) RCW.

(7) "Communicable disease" means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air.

(8) "Confidential HIV testing" means that the name or identity of the individual tested for HIV will be recorded and linked to the HIV test result, and that the name of the individual testing positive for HIV will be reported to the state or local health officer in a private manner.

(9) "Contaminated" or "contamination" means containing or having contact with infectious agents or chemical or radiological materials that pose an immediate threat to present or future public health.

[(10)] "Contamination control measures" means the management of persons, animals, goods, and facilities that are contaminated, or suspected to be contaminated, in a manner to avoid human exposure to the contaminant, prevent the contaminant from spreading, and/or effect decontamination.

(11) "Department" means the Washington state department of health.

(12) "Detention" or "detainment" means physical restriction of activities of an individual by confinement for the purpose of controlling or preventing a serious and imminent threat to public health and may include physical plant, facilities, equipment, and/or personnel to physically restrict activities of the individual to accomplish such purposes.

(13) "Disease control measures" means the management of persons, animals, goods, and facilities that are infected with, suspected to be infected with, exposed to, or suspected to be exposed to an infectious agent in a manner to prevent transmission of the infectious agent to humans.

(14) "Health care facility" means:

(a) Any facility or institution licensed under chapter [18.20](#) RCW, boarding home, chapter [18.46](#) RCW, birthing centers, chapter [18.51](#) RCW, nursing homes, chapter [70.41](#) RCW, hospitals, or chapter [71.12](#) RCW, private establishments, clinics, or other settings where one or more health care providers practice; and

(b) In reference to a sexually transmitted disease, other settings as defined in chapter [70.24](#) RCW.

(15) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title [18](#) RCW; or

(b) Is military personnel providing health care within the state regardless of licensure.

(16) "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC [246-100-207](#). To assure that the protection, including but not limited to, pre- and post-test counseling, consent, and confidentiality afforded to HIV testing as described in chapter [246-100](#) WAC also applies to the enumeration of CD4 + (T4) lymphocyte counts (CD4 + counts) and CD4 + (T4) percents of total lymphocytes (CD4 + percents) when used to diagnose HIV infection, CD4 + counts and CD4 + percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:

(a) Monitoring previously diagnosed infection with HIV;

(b) Monitoring organ or bone marrow transplants;

(c) Monitoring chemotherapy;

(d) Medical research; or

(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.

The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person asserting such existence.

(17) "Infectious agent" means an organism such as a virus, rickettsia, bacteria, fungus, protozoan, or helminth that is

capable of producing infection or infectious disease.

(18) "Isolation" means the separation, for the period of communicability or contamination, of infected or contaminated persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of the infectious agent or contaminant from those infected or contaminated to those who are susceptible or who may spread the agent or contaminant to others.

(19) "Local health department" means the city, town, county, or district agency providing public health services to persons within the area, as provided in chapter [70.05](#) RCW and chapter [70.08](#) RCW.

(20) "Local health officer" means the individual having been appointed under chapter [70.05](#) RCW as the health officer for the local health department, or having been appointed under chapter [70.08](#) RCW as the director of public health of a combined city-county health department, or his or her delegate appointed by the local board of health.

(21) "Nosocomial infection" means an infection acquired in a hospital or other health care facility.

(22) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

(23) "Post-test counseling" means counseling after the HIV test when results are provided and directed toward:

(a) Increasing the individual's understanding of human immunodeficiency virus (HIV) infection;

(b) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection;

(c) Encouraging the individual testing positive to notify persons with whom there has been contact capable of spreading HIV;

(d) Assessing emotional impact of HIV test results; and

(e) Appropriate referral for other community support services.

(24) "Pretest counseling" means counseling provided prior to HIV testing and aimed at:

(a) Helping an individual to understand:

(i) Ways to reduce the risk of human immunodeficiency virus (HIV) transmission;

(ii) The nature, purpose, and potential ramifications of HIV testing;

(iii) The significance of the results of HIV testing; and

(iv) The dangers of HIV infection; and

(b) Assessing the individual's ability to cope with the results of HIV testing.

(25) "Principal health care provider" means the attending physician or other health care provider recognized as primarily responsible for diagnosis and treatment of a patient or, in the absence of such, the health care provider initiating diagnostic testing or therapy for a patient.

(26) "Quarantine" means the limitation of freedom of movement of such well persons or domestic animals as have been exposed to, or are suspected to have been exposed to, an infectious agent, for a period of time not longer than the longest usual incubation period of the infectious agent, in such manner as to prevent effective contact with those not so exposed.

(27) "School" means a facility for programs of education as defined in RCW [28A.210.070](#) (preschool and kindergarten through grade twelve).

(28) "Sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

(a) Acute pelvic inflammatory disease;

(b) Chancroid;

(c) Chlamydia trachomatis infection;

- (d) Genital and neonatal herpes simplex;
- (e) Genital human papilloma virus infection;
- (f) Gonorrhea;
- (g) Granuloma inguinale;
- (h) Hepatitis B infection;
- (i) Human immunodeficiency virus infection (HIV) and acquired immunodeficiency syndrome (AIDS);
- (j) Lymphogranuloma venereum;
- (k) Nongonococcal urethritis (NGU); and
- (l) Syphilis.

(29) "Spouse" means any individual who is the marriage partner of an HIV-infected individual, or who has been the marriage partner of the HIV-infected individual within the ten-year period prior to the diagnosis of HIV-infection, and evidence exists of possible exposure to HIV.

(30) "State health officer" means the person designated by the secretary of the department to serve as statewide health officer, or, in the absence of such designation, the person having primary responsibility for public health matters in the state.

(31) "Suspected case" or "suspected to be infected" means the local health officer, in his or her professional judgment, reasonably believes that infection with a particular infectious agent is likely based on signs and symptoms, laboratory evidence, or contact with an infected individual, animal, or contaminated environment.

(32) "Veterinarian" means an individual licensed under provisions of chapter [18.92](#) RCW, veterinary medicine, surgery, and dentistry and practicing animal health care.

**WAC 246-100-036 Responsibilities and duties — Local health officers.**

(1) The local health officer shall establish, in consultation with local health care providers, health facilities, emergency management personnel, law enforcement agencies, and any other entity he or she deems necessary, plans, policies, and procedures for instituting emergency measures necessary to prevent the spread of communicable disease or contamination.

(2) Local health officers shall:

(a) Notify health care providers within the health district regarding requirements in this chapter;

(b) Ensure anonymous HIV testing is reasonably available;

(c) Make HIV testing, AIDS counseling, and pretest and post-test counseling, as defined in this chapter, available for voluntary, mandatory, and anonymous testing and counseling as required by RCW [70.24.400](#);

(d) Make information on anonymous HIV testing, AIDS counseling, and pretest and post-test counseling, as described under WAC [246-100-208](#) and [246-100-209](#), available;

(e) Use identifying information on HIV-infected individuals provided according to chapter [246-101](#) WAC only:

(i) For purposes of contacting the HIV-positive individual to provide test results and post-test counseling; or

(ii) To contact persons who have experienced substantial exposure, including sex and injection equipment-sharing partners, and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed care services and counseling and disease prevention; and

(f) Destroy documentation of referral information established in WAC [246-100-072](#) and this subsection containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first.

(3) Local health officers shall, when necessary, conduct investigations and institute disease control and contamination control measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or

animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities, consistent with those indicated in the 17th edition, 2000 of the *Control of Communicable Disease Manual*, published by the American Public Health Association, or other measures he or she deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information.

(4) A local health department may make agreements with tribal governments, with federal authorities or with state agencies or institutions of higher education that empower the local health officer to conduct investigations and institute control measures in accordance with WAC [246-100-040](#) on tribal lands, federal enclaves and military bases, and the campuses of state institutions. State institutions include, but are not limited to, state-operated colleges and universities, schools, hospitals, prisons, group homes, juvenile detention centers, institutions for juvenile delinquents, and residential habilitation centers.

**WAC 246-100-040    *Procedures for isolation or quarantine.***

(1) At his or her sole discretion, a local health officer may issue an emergency detention order causing a person or group of persons to be immediately detained for purposes of isolation or quarantine in accordance with subsection (3) of this section, or may petition the superior court *ex parte* for an order to take the person or group of persons into involuntary detention for purposes of isolation or quarantine in accordance with subsection (4) of this section, provided that he or she:

(a) Has first made reasonable efforts, which shall be documented, to obtain voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, and inspection and closure of facilities, or has determined in his or her professional judgment that seeking voluntary compliance would create a risk of serious harm; and

(b) Has reason to believe that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or chemical, biological, or radiological agent that could spread to or contaminate others if remedial action is not taken; and

(c) Has reason to believe that the person or group of persons would pose a serious and imminent risk to the health and safety of others if not detained for purposes of isolation or quarantine.

(2) A local health officer may invoke the powers of police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department to enforce immediately orders given to effectuate the purposes of this section in accordance with the provisions of RCW [43.20.050](#)(4) and [70.05.120](#).

(3) If a local health officer orders the immediate involuntary detention of a person or group of persons for purposes of isolation or quarantine:

(a) The emergency detention order shall be for a period not to exceed ten days.

(b) The local health officer shall issue a written emergency detention order as soon as reasonably possible and in all cases within twelve hours of detention that shall specify the following:

(i) The identity of all persons or groups subject to isolation or quarantine;

(ii) The premises subject to isolation or quarantine;

(iii) The date and time at which isolation or quarantine commences;

(iv) The suspected communicable disease or infectious agent if known;

(v) The measures taken by the local health officer to seek voluntary compliance or the basis on which the local health officer determined that seeking voluntary compliance would create a risk of serious harm; and

(vi) The medical basis on which isolation or quarantine is justified.

(c) The local health officer shall provide copies of the written emergency detention order to the person or group of persons detained or, if the order applies to a group and it is impractical to provide individual copies, post copies in a conspicuous place in the premises where isolation or quarantine has been imposed.

(d) Along with the written order, and by the same means of distribution, the local health officer shall provide the person or group of persons detained with the following written notice:

NOTICE: You have the right to petition the superior court for release from isolation or quarantine in accordance with WAC [246-100-055](#). You have a right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

(4) If a local health officer petitions the superior court *ex parte* for an order authorizing involuntary detention of a person or group of persons for purposes of isolation or quarantine pursuant to this section:

(a) The petition shall specify:

(i) The identity of all persons or groups to be subject to isolation or quarantine;

(ii) The premises where isolation or quarantine will take place;

(iii) The date and time at which isolation or quarantine will commence;

(iv) The suspected communicable disease or infectious agent if known;

(v) The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious agent if known;

(vi) The measures taken by the local health officer to seek voluntary compliance or the basis on which the local health officer determined that seeking voluntary compliance would create a risk of serious harm;

(vii) The medical basis on which isolation or quarantine is justified.

(b) The petition shall be accompanied by the declaration of the local health officer attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.

(c) Notice to the persons or groups identified in the petition shall be accomplished in accordance with the rules of civil procedure.

(d) The court shall hold a hearing on a petition filed pursuant to this section within seventy-two hours of filing, exclusive of Saturdays, Sundays, and holidays.

(e) The court shall issue the order if there is a reasonable basis to find that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.

(f) A court order authorizing isolation or quarantine as a result of an *ex parte* hearing shall:

(i) Specify a maximum duration for isolation or quarantine not to exceed ten days;

(ii) Identify the isolated or quarantined persons or groups by name or shared or similar characteristics or circumstances;

(iii) Specify factual findings warranting isolation or quarantine pursuant to this section;

(iv) Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this section;

(v) Specify the premises where isolation or quarantine will take place; and

(vi) Be served on all affected persons or groups in accordance with the rules of civil procedure.

(5) A local health officer may petition the superior court for an order authorizing the continued isolation or quarantine of a person or group detained under subsections (3) or (4) of this section for a period up to thirty days.

(a) The petition shall specify:

(i) The identity of all persons or groups subject to isolation or quarantine;

(ii) The premises where isolation or quarantine is taking place;

(iii) The communicable disease or infectious agent if known;

(iv) The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious agent if known;

(v) The medical basis on which continued isolation or quarantine is justified.

(b) The petition shall be accompanied by the declaration of the local health officer attesting to the facts asserted in the

petition, together with any further information that may be relevant and material to the court's consideration.

(c) The petition shall be accompanied by a statement of compliance with the conditions and principles for isolation and quarantine contained in WAC [246-100-045](#).

(d) Notice to the persons or groups identified in the petition shall be accomplished in accordance with the rules of civil procedure.

(e) The court shall hold a hearing on a petition filed pursuant to this subsection within seventy-two hours of filing, exclusive of Saturdays, Sundays, and holidays. In extraordinary circumstances and for good cause shown, the local health officer may apply to continue the hearing date for up to ten days, which continuance the court may grant at its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the public health threat, and the availability of necessary witnesses and evidence.

(f) The court shall grant the petition if it finds that there is clear, cogent, and convincing evidence that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.

(g) A court order authorizing continued isolation or quarantine as a result of a hearing shall:

(i) Specify a maximum duration for isolation or quarantine not to exceed thirty days;

(ii) Identify the isolated or quarantined persons or groups by name or shared or similar characteristics or circumstances;

(iii) Specify factual findings warranting isolation or quarantine pursuant to this section;

(iv) Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this section;

(v) Specify the premises where isolation or quarantine will take place; and

(vi) Be served on all affected persons or groups in accordance with the rules of civil procedure.

(6) Prior to the expiration of a court order for continued detention issued pursuant to subsection (5) of this section, the local health officer may petition the superior court to continue isolation or quarantine provided:

(a) The court finds there is a reasonable basis to require continued isolation or quarantine to prevent a serious and imminent threat to the health and safety of others.

(b) The order shall be for a period not to exceed thirty days.

(7) State statutes, rules, and state and federal emergency declarations governing procedures for detention, examination, counseling, testing, treatment, vaccination, isolation, or quarantine for specified health emergencies or specified communicable diseases, including, but not limited to, tuberculosis and HIV, shall supercede this section.

**WAC 246-100-045    *Conditions and principles for isolation or quarantine.***

The local health officer shall adhere to the following conditions and principles when isolating or quarantining a person or group of persons in accordance with WAC [246-100-040](#):

(1) Isolation or quarantine must be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but are not limited to, confinement to private homes or other public or private premises;

(2) Isolated individuals must be confined separately from quarantined individuals;

(3) The health status of isolated or quarantined individuals must be monitored regularly to determine if they require continued isolation or quarantine;

(4) If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease that the local health officer believes poses a significant threat to the health and safety of other quarantined individuals, he or she must promptly be placed in isolation;

(5) Isolated or quarantined individuals must be released as soon as practicable when the local health officer determines that they have been successfully decontaminated or that they pose no substantial risk of transmitting a communicable or possibly communicable disease that would constitute a serious or imminent threat to the health and safety of others;

(6) The needs of a person isolated or quarantined must be addressed to the greatest extent possible in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care;

(7) Premises used for isolation or quarantine must be maintained in a safe and hygienic manner to minimize the likelihood of further transmission of infection or other harm to persons isolated and quarantined;

(8) To the extent possible, cultural and religious beliefs should be considered in addressing the needs of individuals, and establishing and maintaining isolation or quarantine premises;

(9) Isolation or quarantine shall not abridge the right of any person to rely exclusively on spiritual means alone through prayer to treat a communicable or possibly communicable disease in accordance with religious tenets and practices, nor shall anything in this chapter be deemed to prohibit a person so relying who is infected with a contagious or communicable disease from being isolated or quarantined in a private place of his or her own choice, provided, it is approved by the local health officer, and all laws, rules and regulations governing control, sanitation, isolation and quarantine are complied with. At his or her sole discretion, the local health officer may isolate infected individuals declining treatment for the duration of their communicable infection.

**WAC 246-100-050    *Isolation or quarantine premises.***

(1) Entry into isolation or quarantine premises shall be restricted under the following conditions:

(a) The local health officer may authorize physicians, health care workers, or others access to individuals in isolation or quarantine pursuant to WAC [246-100-040](#) as necessary to meet the needs of isolated or quarantined individuals;

(b) No person, other than a person authorized by the local health officer, shall enter isolation or quarantine premises;

(c) Any person entering isolation or quarantine premises shall be provided with infection control training and may be required to wear personal protective equipment or receive vaccination as appropriate;

(d) Any person entering isolation or quarantine premises with or without authorization of the local health officer may be isolated or quarantined.

(2) Persons subject to isolation or quarantine and persons entering isolation or quarantine premises shall obey the rules established by the state board of health and the orders of the local health officer, and failure to do so shall constitute a misdemeanor consistent with the provisions of RCW [43.20.050](#)(4) and [70.05.120](#).

**WAC 246-100-055    *Relief from isolation or quarantine.***

Any person or group of persons isolated or quarantined pursuant to this chapter may seek relief from the superior court.

(1) Any person or group of persons detained by order of a local health officer pursuant to WAC [246-100-040](#)(3) may apply to the court for an order to show cause why the individual or group should not be released.

(a) The court shall rule on the application to show cause within forty-eight hours of its filing.

(b) If the court grants the application, the court shall schedule a hearing on the order to show cause as soon as practicable.

(c) The issuance of an order to show cause shall not stay or enjoin an isolation or quarantine order.

(2) An individual or group isolated or quarantined may request a hearing in the court for remedies regarding breaches to the conditions of isolation or quarantine required by WAC [246-100-045](#).

(3) A request for a hearing shall not stay or enjoin an isolation or quarantine order.

(4) Upon receipt of a request under this subsection alleging extraordinary circumstances justifying the immediate granting of relief, the court shall fix a date for hearing on the matters alleged as soon as practicable.

(5) Otherwise, upon receipt of a request under this section, the court shall fix a date for hearing on the matters alleged within five days from receipt of the request.

(6) In any proceedings brought for relief under this subsection, in extraordinary circumstances and for good cause shown, the local health authority may move the court to extend the time for a hearing, which extension the court in its discretion may grant giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence.

(7) Any hearings for relief under this section involving a petitioner or petitioners judged to be contagious for a communicable disease will be conducted in a manner that utilizes appropriate infection control precautions and minimizes the risk of disease transmission.

**WAC 246-100-060     *Right to counsel.***

A person or group of persons isolated or quarantined pursuant to WAC [246-100-040](#) has a right to be represented by counsel if they so elect. If such person or group requests counsel and cannot afford counsel, the court shall appoint counsel consistent with the provisions of chapter [10.101](#) RCW. The local health officer must provide adequate means of communication between such persons or groups and their counsel.

**WAC 246-100-065     *Consolidation.***

In any proceedings brought pursuant to this chapter, to promote the fair and efficient operation of justice and having given due regard to the rights of affected persons, the severity of the threat to the public's health, and the availability of necessary witnesses and evidence, the court may order the consolidation of individual claims into group claims where:

- (1) The number of individuals involved or to be affected is so large as to render individual participation impractical;
- (2) There are questions of law or fact common to the individual claims or rights to be determined;
- (3) The group claims or rights to be determined are typical of the affected persons' claims or rights; and
- (4) The entire group will be adequately represented in the consolidation.

**WAC 246-100-070     *Enforcement of local health officer orders.***

(1) An order issued by a local health officer in accordance with this chapter shall constitute the duly authorized application of lawful rules adopted by the state board of health and must be enforced by all police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department in accordance with RCW [43.20.050](#).

(2) Any person who shall violate any of the provisions of this chapter or any lawful rule adopted by the board shall be deemed guilty of a misdemeanor punishable as provided under RCW [43.20.050](#).

(3) Any person who shall fail or refuse to obey any lawful order issued by any local health officer shall be deemed guilty of a misdemeanor punishable as provided under RCW [70.05.120](#).

**WAC 246-100-203     *Special diseases — Sexually transmitted diseases — Health officer orders.***

(1) A state or local health officer within his or her jurisdiction may, in accordance with RCW [70.24.024](#), issue orders for medical examination, testing, and/or counseling, as well as orders to cease and desist specific activities, when he or she knows or has reason to believe that a person has a sexually transmitted disease and is engaging in conduct endangering the public health.

(a) For purposes of this section, "reason to believe" means a health officer's belief that is based on:

(i) Laboratory test results confirming or suggestive of a STD; or

(ii) A health care provider's direct observation of clinical signs confirming an individual has or is likely to have a STD; or

(iii) Information obtained directly from an individual infected with a STD about the identity of his or her sexual or needle-sharing contacts when:

(A) Contact with the infected individual occurred during a period when the disease may have been infectious; and

(B) The contact was sufficient to transmit the disease; and

(C) The infected individual is, in the health officer's judgment, credible and believable.

(b) "Conduct endangering the public health" for the purposes of RCW [70.24.024](#) and this section, means:

(i) Anal, oral, or vaginal intercourse for all sexually transmitted diseases;

(ii) For HIV and Hepatitis B:

(A) Anal, oral, or vaginal intercourse; and/or

(B) Sharing of injection equipment; and/or

(C) Donating or selling blood, blood products, body tissues, or semen; and

(iii) Activities described in (b)(i) and (ii) of this subsection resulting in introduction of blood, semen, and/or vaginal fluids to:

(A) Mucous membranes;

(B) Eyes;

(C) Open cuts, wounds, lesions; or

(D) Interruption of epidermis.

(c) State and local health officers and their authorized representatives shall have authority to issue written orders for medical examination, testing, and/or counseling under chapter [70.24](#) RCW, only after:

(i) All other efforts to protect public health have failed, including reasonable efforts to obtain the voluntary cooperation of the person to be affected by the order; and

(ii) They have sufficient evidence to "reasonably believe" the individual to be affected by the order:

(A) Has a sexually transmitted disease; and

(B) Is engaging in "conduct endangering public health"; and

(iii) They have investigated and confirmed the existence of "conduct endangering the public health" by:

(A) Interviewing sources to assess their credibility and accuracy; and

(B) Interviewing the person to be affected by the order; and

(iv) They have incorporated all information required in RCW [70.24.024](#) in a written order.

(d) State and local health officers and their authorized representatives shall have authority to issue written orders for treatment under RCW [70.24.022](#) only after laboratory test results or direct observation of clinical signs or assessment of clinical data by a physician confirm the individual has, or is likely to have, a sexually transmitted disease.

(e) State and local health officers and their authorized representatives shall have authority to issue written orders to cease and desist from specified activities under RCW [70.24.024](#) only after:

(i) They have determined the person to be affected by the order is engaging in "conduct endangering public health"; and

(ii) Laboratory test results, or direct observation of clinical signs or assessment of clinical data by a physician, confirm the individual has, or is likely to have, a sexually transmitted disease; and

(iii) They have exhausted procedures described in subsection (8)(a) of this section; and

(iv) They have enlisted, if appropriate, court enforcement of the orders described in (c) and (d) of this subsection.

(f) Written orders to cease and desist from specified activities shall be for an initial period of time not to exceed three months, and may be renewed by the health officer for periods of time not to exceed three months provided all requirements of RCW [70.24.024](#) regarding notification, confidentiality, right to a judicial hearing, and right to counsel are met again at the time of renewal.

(2) A state or local health officer within his or her jurisdiction may, in accordance with RCW [70.24.034](#), bring action in superior court to detain a person in a designated or approved facility when he or she knows or has reason to believe that person has a sexually transmitted disease and continues to engage in behaviors that present an imminent danger to the public health.

(a) "Behaviors that present an imminent danger to public health" or "BPID" for the purposes of detention in accordance with RCW [70.24.034](#) and this section means the following activities, under conditions specified below, performed by an individual with a laboratory-confirmed HIV infection:

(i) Anal or vaginal intercourse without a latex condom; or

(ii) Shared use of blood-contaminated injection equipment;

(iii) Donating or selling HIV-infected blood, blood products, or semen; and

(iv) Activities described in (a)(i) and (ii) of this subsection constitute BPID only if:

(A) The infected individual received post-test counseling as described in WAC [246-100-209](#) prior to repeating activities; and

(B) The infected individual did not inform the persons with whom the activities occurred of his or her infectious status.

(b) State and local health officers and their authorized representatives shall have authority to seek court orders for detainment under RCW [70.24.034](#) only for persons infected with HIV and only after:

(i) Exhausting procedures described in subsection (1) of this section; and

(ii) Enlisting, if appropriate, court enforcement of orders to cease and desist; and

(iii) Having sufficient evidence to "reasonably believe" the person is engaging in BPID.

(c) A local health officer may notify the state health officer if he or she determines:

(i) The criteria for BPID are met by an individual; and

(ii) Such individual fails to comply with a cease and desist order affirmed or issued by a court.

(d) A local or state health officer may request the prosecuting attorney to file an action in superior court to detain an individual specified in this subsection. The requesting local or state health officer or authorized representative shall:

(i) Notify the department prior to recommending the detainment setting where the individualized counseling and education plan may be carried out consistent with subsection (9)(d), (e), and (f) of this section;

(ii) Make a recommendation to the court for placement of such individual consistent with (e), (f), and (g) of this subsection; and

(iii) Provide to the court an individualized plan for education and counseling consistent with (f) of this subsection.

(e) State board of health requirements for detainment of individuals demonstrating BPID include:

(i) Sufficient number of staff, caregivers, and/or family members to:

(A) Provide round-the-clock supervision, safety of detainee, and security; and

(B) Limit and restrict activities to prevent BPID; and

(C) Make available any medical, psychological, or nursing care when needed; and

(D) Provide access to AIDS education and counseling; and

(E) Immediately notify the local or state health officer of unauthorized absence or elopement; and

(ii) Sufficient equipment and facilities to provide:

(A) Meals and nourishment to meet nutritional needs; and

(B) A sanitary toilet and lavatory; and

(C) A bathing facility; and

(D) Bed and clean bedding appropriate to size of detainee; and

(E) A safe detention setting appropriate to chronological and developmental age of detainee; and

(F) A private sleeping room; and

(G) Prevention of sexual exploitation;

- (iii) Sufficient access to services and programs directed toward cessation of BPID and providing:
  - (A) Linguistically, socially, culturally, and developmentally appropriate ongoing AIDS education and counseling; and
  - (B) Psychological and psychiatric evaluation and counseling; and
  - (C) Implementation of court-ordered plan for individualized counseling and education consistent with (g) of this subsection;
- (iv) If required, provide access to isolation and/or restraint in accordance with restraint and seclusion rules in WAC [275-55-263](#) (2)(c);
- (v) Maintain a safe, secure environment free from harassment, physical danger, and sexual exploitation.
- (f) Washington state board of health standards for an individualized counseling and education plan for a detainee:
  - (i) Consideration of detainee's personal and environmental characteristics, culture, social group, developmental age, and language;
  - (ii) Identification of habitual and addictive behavior and relapse pattern;
  - (iii) Identification of unique risk factors and possible cross-addiction leading to behavior presenting imminent danger to public health;
  - (iv) Identification of obstacles to behavior change and determination of specific objectives for desired behavior;
  - (v) Provision of information about acquisition and transmission of HIV infection;
  - (vi) Teaching and training of individual coping skills to prevent relapse to BPID;
  - (vii) Specific counseling for chemical dependency, if required;
  - (viii) Identification of and assistance with access to community resources, including social services and self-help groups appropriate to provide ongoing support and maintenance of behavior change; and
  - (ix) Designation of a person primarily responsible for counseling and/or education who:
    - (A) Completed pretest and post-test counselor training approved by the office on AIDS; and
    - (B) Received training, as approved by the office on AIDS, focused on facilitating behavior change related to preventing BPID; and
    - (C) Has a postgraduate degree in social work, psychology, counseling, psychosocial nursing, or other allied profession; and
    - (D) Completed at least one year clinical experience after postgraduate education with a primary focus on individualized behavior change; and
    - (E) Is a certified counselor under chapter [18.19](#) RCW;
  - (x) Designation and provision of a qualified counselor under WAC [275-19-145](#) when the detainee is assessed to have a drug or alcohol problem.
- (g) The state board of health designates the following settings appropriate for detainment provided a setting meets requirements in (e)(i), (ii), (iii), (iv), and (v) of this subsection:
  - (i) Homes, care facilities, or treatment institutions operated or contracted by the department;
  - (ii) Private homes, as recommended by the local or state health officer;
  - (iii) Boarding homes licensed under chapter [18.20](#) RCW;
  - (iv) Nursing homes licensed under chapter [18.51](#) RCW;
  - (v) Facilities licensed under chapter [71.12](#) RCW, including:
    - (A) Psychiatric hospitals, per chapter [246-322](#) WAC;

- (B) Alcoholism treatment centers if certified for substance use under chapter [275-19](#) WAC;
- (C) Adult residential rehabilitation centers, per chapter [246-325](#) WAC;
- (D) Private adult treatment homes, per chapter [246-325](#) WAC;
- (E) Residential treatment facilities for psychiatrically impaired children and youth, per chapter [246-323](#) WAC;
- (vi) A hospital licensed under chapter [70.41](#) RCW.

**WAC 246-101-010      *Definitions within the notifiable conditions regulations.***

The following definitions apply in the interpretation and enforcement of this chapter:

- (1) "Blood lead level" means a measurement of lead content in whole blood.
- (2) "Board" means the Washington state board of health.
- (3) "Carrier" means a person harboring a specific infectious agent and serving as a potential source of infection to others.
- (4) "Case" means a person, alive or dead, diagnosed with a particular disease or condition by a health care provider with diagnosis based on clinical or laboratory criteria or both.
- (5) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter [74.15](#) RCW.
- (6) "Condition notifiable within three work days" means a notifiable condition that must be reported to the local health officer or department within three working days following date of diagnosis. For example, if a condition notifiable within three work days is diagnosed on a Friday afternoon, the report must be submitted by the following Wednesday.
- (7) "Communicable disease" means a disease caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air.
- (8) "Communicable disease cluster" means two or more cases of a confirmed or suspected communicable disease with a suspected common source diagnosed or exposed within a twenty-four hour period.
- (9) "Contact" means a person exposed to an infected person, animal, or contaminated environment that may lead to infection.
- (10) "Department" means the Washington state department of health.
- (11) "Disease of suspected bioterrorism origin" means a disease caused by viruses, bacteria, fungi, or toxins from living organisms that are used to produce death or disease in humans, animals, or plants. Many of these diseases may have nonspecific presenting symptoms. The following situations could represent a possible bioterrorism event and should be reported immediately to the local health department:
  - (a) A single diagnosed or strongly suspected case of disease caused by an uncommon agent or a potential agent of bioterrorism occurring in a patient with no known risk factors;
  - (b) A cluster of patients presenting with a similar syndrome that includes unusual disease characteristics or unusually high morbidity or mortality without obvious etiology; or
  - (c) Unexplained increase in a common syndrome above seasonally expected levels.
- (12) "Elevated blood lead level" means blood lead levels equal to or greater than 25 micrograms per deciliter for persons aged fifteen years or older, or equal to or greater than 10 micrograms per deciliter in children less than fifteen years of age.
- (13) "Food service establishment" means a place, location, operation, site, or facility where food is manufactured, prepared, processed, packaged, dispensed, distributed, sold, served, or offered to the consumer regardless of whether or not compensation for food occurs.
- (14) "Health care facility" means:

(a) Any facility or institution licensed under chapter [18.20](#) RCW, Boarding homes; chapter [18.46](#) RCW, Birthing centers; chapter [18.51](#) RCW, Nursing homes; chapter [70.41](#) RCW, Hospitals; chapter [70.128](#) RCW, Adult family homes; or chapter [71.12](#) RCW, Private establishments;

(b) Clinics, or other settings where one or more health care providers practice; and

(c) In reference to a sexually transmitted disease, other settings as defined in chapter [70.24](#) RCW.

(15) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title [18](#) RCW; or

(b) Military personnel providing health care within the state regardless of licensure.

(16) "Health care services to the patient" means treatment, consultation, or intervention for patient care.

(17) "Health carrier" means a disability insurer regulated under chapter [48.20](#) or [48.21](#) RCW, a health care service contractor as defined in RCW [48.44.010](#), or a health maintenance organization as defined in RCW [48.46.020](#).

(18) "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC [246-100-207](#). To assure that the protection, including, but not limited to, pre- and post-test counseling, consent, and confidentiality afforded to HIV testing as described in chapter [246-100](#) WAC also applies to the enumeration of CD4 + (T4) lymphocyte counts (CD4 + counts) and CD4 + (T4) percents of total lymphocytes (CD4 + percents) when used to diagnose HIV infection, CD4 + counts and CD4 + percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:

(a) Monitoring previously diagnosed infection with HIV;

(b) Monitoring organ or bone marrow transplants;

(c) Monitoring chemotherapy;

(d) Medical research; or

(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.

The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person asserting the existence.

(19) "Immediately notifiable condition" means a notifiable condition of urgent public health importance, a case or suspected case of which must be reported to the local health officer or the department immediately at the time of diagnosis or suspected diagnosis.

(20) "Infection control measures" means the management of infected persons, or of a person suspected to be infected, and others in a manner to prevent transmission of the infectious agent.

(21) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects as defined in RCW [70.02.010](#).

(22) "Isolation" means the separation or restriction of activities of infected individuals, or of persons suspected to be infected, from other persons to prevent transmission of the infectious agent.

(23) "Laboratory" means any facility licensed as a medical test site under chapter [70.42](#) RCW.

(24) "Laboratory director" means the director or manager, by whatever title known, having the administrative responsibility in any licensed medical test site.

(25) "Local health department" means the city, town, county, or district agency providing public health services to persons within the area, established under chapters [70.05](#), [70.08](#), and [70.46](#) RCW.

(26) "Local health officer" means the individual having been appointed under chapter [70.05](#) RCW as the health officer for the local health department, or having been appointed under chapter [70.08](#) RCW as the director of public health of a combined city-county health department.

(27) "Member of the general public" means any person present within the boundary of the state of Washington.

(28) "Monthly notifiable condition" means a notifiable condition which must be reported to the local health officer or department within one month of diagnosis.

(29) "Nosocomial infection" means an infection acquired in a hospital or other health care facility.

(30) "Notifiable condition" means a disease or condition of public health importance, a case of which, and for certain diseases, a suspected case of which, must be brought to the attention of the local health officer or the state health officer.

(31) "Other rare diseases of public health significance" means a disease or condition, of general public health concern, which is occasionally or not ordinarily seen in the state of Washington including, but not limited to, viral hemorrhagic fevers, Rocky Mountain Spotted fever, and other tick borne diseases. This also includes a communicable disease that would be of general public concern if detected in Washington.

(32) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

(33) "Patient" means a case, suspected case, or contact.

(34) "Pesticide poisoning" means the disturbance of function, damage to structure, or illness in humans resulting from the inhalation, absorption, ingestion of, or contact with any pesticide.

(35) "Principal health care provider" means the attending health care provider recognized as primarily responsible for diagnosis or treatment of a patient, or in the absence of such, the health care provider initiating diagnostic testing or treatment for the patient.

(36) "Public health authorities" means local health departments, the state health department, and the department of labor and industries personnel charged with administering provisions of this chapter.

(37) "Quarantine" means the separation or restriction on activities of an individual having been exposed to or infected with an infectious agent, to prevent disease transmission.

(38) "School" means a facility for programs of education as defined in RCW [28A.210.070](#) (preschool and kindergarten through grade twelve).

(39) "Sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

- (a) Acute pelvic inflammatory disease;
- (b) Chancroid;
- (c) *Chlamydia trachomatis* infection;
- (d) Genital and neonatal Herpes simplex;
- (e) Genital human papilloma virus infection;
- (f) Gonorrhea;
- (g) Granuloma inguinale;
- (h) Hepatitis B infection;
- (i) Human immunodeficiency virus (HIV) infection and acquired immunodeficiency syndrome (AIDS);
- (j) Lymphogranuloma venereum;
- (k) Nongonococcal urethritis (NGU); and
- (l) Syphilis.

(40) "State health officer" means the person designated by the secretary of the department to serve as statewide health officer, or, in the absence of this designation, the person having primary responsibility for public health matters in the state.

(41) "Suspected case" means a person whose diagnosis is thought likely to be a particular disease or condition with suspected diagnosis based on signs and symptoms, laboratory evidence, or both.

(42) "Third-party payor" means an insurer regulated under Title [48](#) RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan; or a state or federal health benefit program as defined in RCW [70.02.010](#).

(43) "Unexplained critical illness or death" means cases of illness or death with infectious hallmarks but no known etiology, in previously healthy persons one to forty-nine years of age excluding those with chronic medical conditions (e.g., malignancy, diabetes, AIDS, cirrhosis).

(44) "Veterinarian" means an individual licensed under provisions of chapter [18.92](#) RCW, Veterinary medicine, surgery, and dentistry and practicing animal health care.

**WAC 246-101-101 Notifiable conditions and the health care provider.**

This section describes the conditions that Washington's health care providers must notify public health authorities of on a statewide basis. The board finds that the conditions in the table below (Table HC-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington. Principal health care providers shall notify public health authorities of these conditions as individual case reports using procedures described throughout this chapter. Other health care providers in attendance shall notify public health authorities of the following notifiable conditions, unless the condition notification has already been made. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC [246-101-105](#), [246-101-110](#), [246-101-115](#), and [246-101-120](#) also include requirements for how notifications shall be made, when they shall be made, the content of these notifications, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table HC-1 (Conditions Notifiable by Health Care Providers)

Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 work days	√	
Animal Bites	Immediately	√	
Arboviral Disease	Within 3 work days	√	
Asthma, occupational	Monthly		√
Birth Defects – Autism Spectrum Disorders	Monthly		√
Birth Defects – Cerebral Palsy	Monthly		√
Birth Defects – Alcohol Related Birth Defects	Monthly		√
Botulism (foodborne, infant, and wound)	Immediately	√	
Brucellosis ( <i>Brucella</i> species)	Immediately	√	
Campylobacteriosis	Within 3 work days	√	
Chancroid	Within 3 work days	√	
<i>Chlamydia trachomatis</i> infection	Within 3 work days	√	
Cholera	Immediately	√	
Cryptosporidiosis	Within 3 work days	√	
Cyclosporiasis	Within 3 work days	√	
Diphtheria	Immediately	√	
Disease of suspected bioterrorism origin (including):	Immediately	√	
• Anthrax			
• Smallpox			
Disease of suspected foodborne origin (communicable disease clusters only)	Immediately	√	
Disease of suspected waterborne origin (communicable disease clusters only)	Immediately	√	
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i>	Immediately	√	

O157:H7 Infection		
Giardiasis	Within 3 work days	√
Gonorrhea	Within 3 work days	√
Granuloma inguinale	Within 3 work days	√
<i>Haemophilus influenzae</i> (invasive disease, children under age 5)	Immediately	√
Hantavirus pulmonary syndrome	Within 3 work days	√
Hemolytic uremic syndrome	Immediately	√
Hepatitis A (acute infection)	Immediately	√
Hepatitis B (acute infection)	Within 3 work days	√
Hepatitis B surface antigen + pregnant women	Within 3 work days	√
Hepatitis B (chronic) – Initial diagnosis, and previously unreported prevalent cases	Monthly	√
Hepatitis C – Acute and chronic	Monthly	√
Hepatitis (infectious), unspecified	Within 3 work days	√
Herpes simplex, neonatal and genital (initial infection only)	Within 3 work days	√
Human immunodeficiency virus (HIV) infection	Within 3 work days	√
Legionellosis	Within 3 work days	√
Leptospirosis	Within 3 work days	√
Listeriosis	Immediately	√
Lyme Disease	Within 3 work days	√
Lymphogranuloma venereum	Within 3 work days	√
Malaria	Within 3 work days	√
Measles (rubeola)	Immediately	√
Meningococcal disease	Immediately	√
Mumps	Within 3 work days	√
Paralytic shellfish poisoning	Immediately	√
Pertussis	Immediately	√
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately	√
Pesticide poisoning (all other)	Within 3 work days	√
Plague	Immediately	√
Poliomyelitis	Immediately	√
Psittacosis	Within 3 work days	√
Q Fever	Within 3 work days	√
Rabies (Confirmed Human or Animal)	Immediately	√
Rabies (Including use of post-exposure prophylaxis)	Within 3 work days	√
Relapsing fever (borreliosis)	Immediately	√
Rubella (including congenital rubella syndrome)	Immediately	√
Salmonellosis	Immediately	√
Serious adverse reactions to immunizations	Within 3 work days	√
Shigellosis	Immediately	√
Syphilis	Within 3 work days	√
Tetanus	Within 3 work days	√
Trichinosis	Within 3 work days	√
Tuberculosis	Immediately	√
Tularemia	Within 3 work days	√
Typhus	Immediately	√
Vibriosis	Within 3 work days	√

Yellow fever	Immediately	√
Yersiniosis	Within 3 work days	√
Other rare diseases of public health significance	Immediately	√
Unexplained critical illness or death	Immediately	√

**WAC 246-101-105 Duties of the health care provider.**

Health care providers shall:

(1) Notify the local health department where the patient resides (in the event that patient residence cannot be determined, notify the local health department where the health care providers practice) regarding:

(a) Cases or suspected cases of notifiable conditions specified as notifiable to local health departments in Table HC-1;

(b) Cases of conditions designated as notifiable by the local health officer within that health officer's jurisdiction;

(c) Outbreaks or suspected outbreaks of disease. These patterns include, but are not limited to, suspected or confirmed outbreaks of chickenpox, influenza, viral meningitis, nosocomial infection suspected due to contaminated food products or devices, or environmentally related disease;

(d) Known barriers which might impede or prevent compliance with orders for infection control or quarantine; and

(e) Name, address, and other pertinent information for any case, suspected case or carrier refusing to comply with prescribed infection control measures.

(2) Notify the department of health of conditions designated as notifiable to the local health department when:

(a) A local health department is closed or representatives of the local health department are unavailable at the time a case or suspected case of an immediately notifiable condition occurs;

(b) A local health department is closed or representatives of the local health department are unavailable at the time an outbreak or suspected outbreak of communicable disease occurs.

(3) Notify the department of pesticide poisoning that is fatal, causes hospitalization or occurs in a cluster.

(4) Notify the department as specified in Table HC-1 regarding cases of notifiable conditions specified as notifiable to the department.

(5) Assure that positive cultures and preliminary test results for notifiable conditions of specimens referred to laboratories outside of Washington for testing are correctly notified to the local health department of the patient's residence or the department as specified in Table Lab-1. This requirement can be satisfied by:

(a) Arranging for the referral laboratory to notify either the local health department, the department, or both; or

(b) Forwarding the notification of the test result from the referral laboratory to the local health department, the department, or both.

(6) Cooperate with public health authorities during investigation of:

(a) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and

(b) An outbreak or suspected outbreak of disease.

(7) Provide adequate and understandable instruction in disease control measures to each patient who has been diagnosed with a case of a communicable disease, and to contacts who may have been exposed to the disease.

(8) Maintain responsibility for deciding date of discharge for hospitalized tuberculosis patients.

(9) Notify the local health officer of intended discharge of tuberculosis patients in order to assure appropriate outpatient arrangements are arranged.

**WAC 246-101-120 Handling of case reports and medical information.**

(1) All records and specimens containing or accompanied by patient identifying information are confidential.

(2) Health care providers who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.

(3) Health care providers with knowledge of a person with sexually transmitted disease, and following the basic principles of health care providers, which respect the human dignity and confidentiality of patients:

(a) May disclose identity of a person or release identifying information only as specified in RCW [70.24.105](#); and

(b) Shall under RCW [70.24.105](#)(6), use only the following customary methods for exchange of medical information:

(i) Health care providers may exchange medical information related to HIV testing, HIV test results, and confirmed HIV or confirmed STD diagnosis and treatment in order to provide health care services to the patient. This means that information shared impacts the care or treatment decisions concerning the patient; and the health care provider requires the information for the patient's benefit.

(ii) Health care providers responsible for office management are authorized to permit access to a patient's medical information and medical record by medical staff or office staff to carry out duties required for care and treatment of a patient and the management of medical information and the patient's medical record.

(c) Health care providers conducting a clinical HIV research project shall report the identity of an individual participating in the project unless:

(i) The project has been approved by an institutional review board; and

(ii) The project has a system in place to remind referring health care providers of their reporting obligations under this chapter.

(4) Health care providers shall establish and implement policies and procedures to maintain confidentiality related to a patient's medical information.

**WAC 246-101-201 Notifiable conditions and laboratories.**

This section describes the conditions about which Washington's laboratories must notify public health authorities of on a statewide basis. The board finds that the conditions in the table below (Table Lab-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington. The board also finds that submission of specimens for many of these conditions will further prevent the spread of disease. Laboratory directors must notify public health authorities of positive cultures and preliminary test results as individual case reports and provide specimen submissions using procedures described throughout this chapter. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC [246-101-205](#), [246-101-210](#), [246-101-215](#), [246-101-220](#), [246-101-225](#), and [246-101-230](#) also include requirements for how notifications and specimen submissions are made, when they are made, the content of these notifications and specimen submissions, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table Lab-1 (Conditions Notifiable by Laboratory Directors)

Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
Arboviral Disease (Isolation; Detection of Viral Nucleic Acid or Antibody)	2 days	√		
Blood Lead Level	Elevated Levels – 2 Days		√	
	Nonelevated Levels – Monthly			
Botulism (Foodborne)	Immediately	√		Serum and Stool - If available, submit suspect foods (2 days)

Botulism (Infant)	Immediately	√		Stool (2 days)
Botulism (Wound)	Immediately	√		Culture, Serum, Debrided tissue, or Swab sample (2 days)
Brucellosis ( <i>Brucella</i> species)	2 days	√		Subcultures (2 days)
CD4 + (T4) lymphocyte counts and/or CD4 + (T4) (patients aged thirteen or older)	Monthly	Only when the local health department is designated by the Department of Health	√ (Except King County)	
<i>Chlamydia trachomatis</i> infection	2 days	√		
Cholera	Immediately	√		Culture (2 days)
Cryptosporidiosis	2 days	√		
Cyclosporiasis	2 days	√		Specimen (2 days)
Diphtheria	2 days	√		Culture (2 days)
Disease of Suspected Bioterrorism Origin (examples):	Immediately	√		Culture (2 days)
• Anthrax				
• Smallpox				
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i> O157:H7 Infection	2 days	√		Culture (2 days)
Gonorrhea	2 days	√		
Hepatitis A (IgM positive)	2 days	√		
Hepatitis B	Monthly	√		
Hepatitis C	Monthly	√		
Human immunodeficiency virus (HIV) infection (for example, positive Western Blot assays, P24 antigen or viral culture tests)	2 days	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Human immunodeficiency virus (HIV) infection (II viral load detection test results - detectable and undetectable)	Monthly	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Listeriosis	2 days	√		
Measles (rubeola)	Immediately	√		Serum (2 days)
Meningococcal disease	2 days	√		Culture (Blood/CSF or other sterile sites) (2 days)
Pertussis	2 days	√		
Plague	Immediately	√		Culture or other appropriate clinical material (2 days)
Rabies (human or animal)	Immediately	√ (Pathology Report Only)		Tissue or other appropriate clinical material (Upon request only)
Salmonellosis	2 days	√		Culture (2 days)
Shigellosis	2 days	√		Culture (2 days)
Syphilis				Serum (2 days)
Tuberculosis	2 days		√	Culture (2 days)
Tuberculosis (Antibiotic sensitivity for first isolates)	2 days		√	

Tularemia

Culture or other appropriate  
clinical material (2 days)

Other rare diseases of  
public health significance

Immediately

√

Additional notifications that are requested but not mandatory include:

(1) Laboratory directors may notify either local health departments or the department or both of other laboratory results through cooperative agreement.

(2) Laboratory directors may submit malaria cultures to the state public health laboratories

**WAC 246-101-205    *Responsibilities and duties of the laboratory director.***

Laboratory directors shall:

(1) Notify the local health department where the patient resides (in the event that patient residence cannot be determined, notify the local health department where the laboratory is located) regarding:

(a) Positive cultures and preliminary test results of notifiable conditions specified as notifiable to the local health department in Table Lab-1.

(b) Positive cultures and preliminary test results of conditions specified as notifiable by the local health officer within that health officer's jurisdiction.

(2) If the laboratory is unable to determine the local health department of the patient's residence, the laboratory director shall notify the local health department in which the health care provider that ordered the laboratory test is located.

(3) Notify the department of health of conditions designated as notifiable to the local health department when:

(a) A local health department is closed or representatives of the local health department are unavailable at the time a positive culture or preliminary test results of an immediately notifiable condition occurs;

(b) A local health department is closed or representatives of the local health department are unavailable at the time an outbreak or suspected outbreak of communicable disease occurs.

(4) Notify the department of positive cultures and preliminary test results for conditions designated notifiable to the department in Table Lab-1.

(5) Notify the department of nonelevated blood lead levels on a monthly basis.

(6) Submit specimens for conditions noted in Table Lab-1 to the Washington state public health laboratories or other laboratory designated by the state health officer for diagnosis, confirmation, storage, or further testing.

(7) Ensure that positive cultures and preliminary test results for notifiable conditions of specimens referred to other laboratories for testing are correctly notified to the correct local health department or the department. This requirement can be satisfied by:

(a) Arranging for the referral laboratory to notify either the local health department, the department, or both; or

(b) Forwarding the notification of the test result from the referral laboratory to the local health department, the department, or both.

(8) Cooperate with public health authorities during investigation of:

(a) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and

(b) An outbreak or suspected outbreak of disease.

(9) Laboratory directors may designate responsibility for working and cooperating with public health authorities to certain employees as long as designated employees are:

(a) Readily available; and

- (b) Able to provide requested information in a timely manner.

**WAC 246-101-230 Handling of case reports and medical information.**

(1) All records and specimens containing or accompanied by patient identifying information are confidential. The Washington state public health laboratories, other laboratories approved as public health referral laboratories, and any persons, institutions, or facilities submitting specimens or records containing patient-identifying information shall maintain the confidentiality of identifying information accompanying submitted laboratory specimens.

(2) Laboratory directors shall establish and implement policies and procedures to maintain confidentiality related to a patient's medical information.

(3) Laboratory directors and personnel working in laboratories who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.

(4) Laboratory directors and personnel working in laboratories with knowledge of a person with sexually transmitted disease, and following the basic principles of health care providers, which respect the human dignity and confidentiality of patients:

(a) May disclose identity of a person or release identifying information only as specified in RCW [70.24.105](#); and

(b) Shall under RCW [70.24.105](#)(6), use only the following customary methods for exchange of medical information:

(i) Laboratory directors and personnel working in laboratories may exchange medical information related to HIV testing, HIV test results, and confirmed HIV or confirmed STD diagnosis and treatment in order to provide health care services to the patient. This means that information shared impacts the care or treatment decisions concerning the patient; and the laboratory director or personnel working in the laboratory requires the information for the patient's benefit.

(ii) Laboratory directors are authorized to permit access to a patient's medical information and medical record by laboratory staff or office staff to carry out duties required for care and treatment of a patient and the management of medical information and the patient's medical record.

**WAC 246-101-301 Notifiable conditions and health care facilities.**

This section describes the conditions that Washington's health care facilities must notify public health authorities of on a statewide basis. The board finds that the conditions in the table below (Table HF-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction. Health care facilities are required to notify public health authorities of cases that occur in their facilities. Health care facilities may choose to assume the notification for their health care providers for conditions designated in Table HF-1. Health care facilities may not assume the reporting requirements of laboratories that are components of the health care facility. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC [246-101-305](#), [246-101-310](#), [246-101-315](#), and [246-101-320](#) also include requirements for how notifications shall be made, when they are made, the content of these notifications, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table HF-1 (Conditions Notifiable by Health Care Facilities)

Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 work days		√
Animal Bites	Immediately	√	
Arboviral Disease	Within 3 work days	√	
Asthma, occupational	Monthly		√
Birth Defects – Abdominal Wall Defects (inclusive of gastroschisis and omphalocele)	Monthly		√
Birth Defects – Autism Spectrum Disorders	Monthly		√

Birth Defects – Cerebral Palsy	Monthly	√
Birth Defects – Down Syndrome	Monthly	√
Birth Defects – Alcohol Related Birth Defects	Monthly	√
Birth Defects – Hypospadias	Monthly	√
Birth Defects – Limb reductions	Monthly	√
Birth Defects – Neural Tube Defects (inclusive of anencephaly and spina bifida)	Monthly	√
Birth Defects – Oral Clefts (inclusive of cleft lip with/without cleft palate)	Monthly	√
Botulism (foodborne, infant, and wound)	Immediately	√
Brucellosis ( <i>Brucella</i> species)	Immediately	√
Cancer ( <i>See chapter 246-430 WAC</i> )	Monthly	√
Chancroid	Within 3 work days	√
<i>Chlamydia trachomatis</i> infection	Within 3 work days	√
Cholera	Immediately	√
Cryptosporidiosis	Within 3 work days	√
Cyclosporiasis	Within 3 work days	√
Diphtheria	Immediately	√
Disease of suspected bioterrorism origin (including):	Immediately	√
• Anthrax		
• Smallpox		
Disease of suspected foodborne origin (communicable disease clusters only)	Immediately	√
Disease of suspected waterborne origin (communicable disease clusters only)	Immediately	√
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i> O157:H7 Infection	Immediately	√
Giardiasis	Within 3 work days	√
Gonorrhea	Within 3 work days	√
Granuloma inguinale	Within 3 work days	√
Gunshot wounds (nonfatal)	Monthly	√
<i>Haemophilus influenzae</i> (invasive disease, children under age 5)	Immediately	√
Hantavirus pulmonary syndrome	Within 3 work days	√
Hemolytic uremic syndrome	Immediately	√
Hepatitis A (acute infection)	Immediately	√
Hepatitis B (acute infection)	Within 3 work days	√
Hepatitis B surface antigen+ pregnant women	Within 3 work days	√
Hepatitis B (chronic) – Initial diagnosis, and previously unreported prevalent cases	Monthly	√
Hepatitis C – Acute and chronic	Monthly	√
Hepatitis (infectious), unspecified	Within 3 work days	√
Human immunodeficiency virus (HIV) infection	Within 3 work days	√
Legionellosis	Within 3 work days	√
Leptospirosis	Within 3 work days	√
Listeriosis	Immediately	√
Lyme Disease	Within 3 work days	√
Lymphogranuloma venereum	Within 3 work days	√
Malaria	Within 3 work days	√

Measles (rubeola)	Immediately	√
Meningococcal disease	Immediately	√
Mumps	Within 3 work days	√
Paralytic shellfish poisoning	Immediately	√
Pertussis	Immediately	√
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately	√
Plague	Immediately	√
Poliomyelitis	Immediately	√
Psittacosis	Within 3 work days	√
Q Fever	Within 3 work days	√
Rabies (Confirmed Human or Animal)	Immediately	√
Rabies (Use of post-exposure prophylaxis)	Within 3 work days	√
Relapsing fever (borreliosis)	Immediately	√
Rubella (including congenital rubella syndrome)	Immediately	√
Salmonellosis	Immediately	√
Serious adverse reactions to immunizations	Within 3 work days	√
Shigellosis	Immediately	√
Syphilis	Within 3 work days	√
Tetanus	Within 3 work days	√
Trichinosis	Within 3 work days	√
Tuberculosis	Immediately	√
Tularemia	Within 3 work days	√
Typhus	Immediately	√
Vibriosis	Within 3 work days	√
Yellow fever	Immediately	√
Yersiniosis	Within 3 work days	√
Other rare diseases of public health significance	Immediately	√
Unexplained critical illness or death	Immediately	√

**WAC 246-101-305 Duties of the health care facility.**

Health care facilities shall:

(1) Notify the local health department where the patient resides (in the event that patient residence cannot be determined, notify the local health department where the health care facility is located) regarding:

(a) Cases of notifiable conditions specified as notifiable to the local health department in Table HF-1 that occur or are treated in the health care facility.

(b) Cases of conditions specified as notifiable by the local health officer within that health officer's jurisdiction that occur or are treated in the health care facility.

(c) Suspected cases of notifiable conditions for conditions that are designated immediately notifiable that occur or are treated in the health care facility.

(d) Outbreaks or suspected outbreaks of disease that occur or are treated in the health care facility. These patterns include, but are not limited to, suspected or confirmed outbreaks of chickenpox, influenza, viral meningitis, nosocomial infection suspected due to contaminated products or devices, or environmentally related disease. Reports of outbreaks and suspected outbreaks of disease are to be made to the local health officer.

(e) Known barriers which might impede or prevent compliance with orders for infection control or quarantine; and

(f) Name, address, and other pertinent information for any case, suspected case or carrier refusing to comply with prescribed infection control measures.

(2) Notify the department of health of conditions designated as notifiable to the local health department when:

(a) A local health department is closed or representatives of the local health department are unavailable at the time a case or suspected case of an immediately notifiable condition occurs;

(b) A local health department is closed or representatives of the local health department are unavailable at the time an outbreak or suspected outbreak of communicable disease occurs.

(3) Notify the department as specified in Table HF-1 regarding cases of notifiable conditions specified as notifiable to the department.

(4) Notify the department of cancer incidence as required by chapter [246-430](#) WAC.

(5) Ensure that positive cultures and preliminary test results for notifiable conditions of specimens referred to laboratories outside of Washington for testing are correctly notified to the correct local health department as specified in Table Lab-1. This requirement can be satisfied by:

(a) Arranging for the referral laboratory to notify either the local health department, the department, or both; or

(b) Receiving the test result from the referral laboratory, and forwarding the notification to the local health department, the department, or both.

(6) Cooperate with public health authorities during investigation of:

(a) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and

(b) An outbreak or suspected outbreak of disease.

(7) Provide adequate and understandable instruction in disease control measures to each patient who has been diagnosed with a case of a communicable disease, and to contacts who may have been exposed to the disease.

(8) Maintain an infection control program as described in WAC [246-320-265](#).

(9) Health care facilities may assume the burden of notification for health care providers practicing within the health care facility where more than one health care provider is in attendance for a patient with a notifiable condition.

(10) Health care facilities may not assume the burden of notification for laboratories within the health care facility. Laboratories within a health care facility must submit specimens to the Washington state public health laboratories and notify public health authorities of notifiable conditions as specified in Table Lab-1.

**WAC 246-101-320    *Handling of case reports and medical information.***

(1) All records and specimens containing or accompanied by patient identifying information are confidential.

(2) Personnel in health care facilities who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.

(3) Personnel in health care facilities with knowledge of a person with sexually transmitted disease, and following the basic principles of health care providers, which respect the human dignity and confidentiality of patients:

(a) May disclose identity of a person or release identifying information only as specified in RCW [70.24.105](#); and

(b) Shall under RCW [70.24.105](#)(6), use only the following customary methods for exchange of medical information:

(i) Health care providers may exchange medical information related to HIV testing, HIV test results, and confirmed HIV or confirmed STD diagnosis and treatment in order to provide health care services to the patient.

(ii) This means that information shared impacts the care or treatment decisions concerning the patient; and the health care provider requires the information for the patient's benefit.

(4) Personnel responsible for health care facility management are authorized to permit access to medical information as necessary to fulfill professional duties. Health care facility administrators shall advise those persons permitted access under this section of the requirement to maintain confidentiality of such information as defined under this section and chapter [70.24](#)

RCW. Professional duties means the following or functionally similar activities:

- (a) Medical record or chart audits;
- (b) Peer reviews;
- (c) Quality assurance;
- (d) Utilization review purposes;
- (e) Research as authorized under chapters [42.48](#) and [70.02](#) RCW;
- (f) Risk management; and
- (g) Reviews required under federal or state law or rules.

(5) Personnel responsible for health care facility management are authorized to permit access to a patient's medical information and medical record by medical staff or health care facility staff to carry out duties required for care and treatment of a patient and the management of medical information and the patient's medical record.

(6) Health care facilities conducting a clinical HIV research project shall report the identity of an individual participating in the project unless:

(a) The project has been approved by an institutional review board; and

(b) The project has a system in place to remind referring health care providers of their reporting obligations under this chapter.

(7) Health care facilities shall establish and implement policies and procedures to maintain confidentiality related to a patient's medical information.

**WAC 246-101-405    Responsibilities of veterinarians.**

Veterinarians shall:

(1) Notify the local health officer of any suspected case or suspected outbreak of any disease listed in Table HC-1 that is transmissible from animals to humans. Examples of these zoonotic diseases include:

- (a) Anthrax;
- (b) Brucellosis;
- (c) Encephalitis, viral;
- (d) Plague;
- (e) Rabies;
- (f) Psittacosis;
- (g) Tuberculosis; and
- (h) Tularemia.

(2) Cooperate with public health authorities in the investigation of cases and suspected cases, or outbreaks and suspected outbreaks of zoonotic disease.

(3) Cooperate with public health authorities in the implementation of infection control measures including isolation and quarantine

**WAC 246-101-410    Responsibilities of food service establishments.**

The person in charge of a food service establishment shall:

- (1) Notify the local health department of potential foodborne disease as required in WAC [246-215-260](#).

(2) Cooperate with public health authorities in the investigation of cases and suspected cases, or outbreaks and suspected outbreaks of foodborne or waterborne disease. This includes the release of the name and other pertinent information about food handlers diagnosed with a communicable disease as it relates to a foodborne or waterborne disease investigation.

(3) Not release information about food handlers with a communicable disease to other employees or the general public.

**WAC 246-101-415    *Responsibilities of child day care facilities.***

Child day care facilities shall:

(1) Notify the local health department of cases or suspected cases, or outbreaks and suspected outbreaks of notifiable conditions that may be associated with the child day care facility.

(2) Consult with a health care provider or the local health department for information about the control and prevention of infectious or communicable disease, as necessary.

(3) Cooperate with public health authorities in the investigation of cases and suspected cases, or outbreaks and suspected outbreaks of disease that may be associated with the child day care facility.

(4) Child day care facilities shall establish and implement policies and procedures to maintain confidentiality related to medical information in their possession.

**WAC 246-101-420    *Responsibilities of schools.***

Schools shall:

(1) Notify the local health department of cases or suspected cases, or outbreaks and suspected outbreaks of disease that may be associated with the school.

(2) Cooperate with the local health department in monitoring influenza.

(3) Consult with a health care provider or the local health department for information about the control and prevention of infectious or communicable disease, as necessary.

(4) Cooperate with public health authorities in the investigation of cases and suspected cases, or outbreaks and suspected outbreaks of disease that may be associated with the school.

(5) Personnel in schools who know of a person with a notifiable condition shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.

(6) Schools shall establish and implement policies and procedures to maintain confidentiality related to medical information in their possession.

**WAC 246-101-505    *Duties of the local health officer or the local health department.***

Local health officers or the local health department shall:

(1) Review and determine appropriate action for:

(a) Each reported case or suspected case of a notifiable condition;

(b) Any disease or condition considered a threat to public health; and

(c) Each reported outbreak or suspected outbreak of disease, requesting assistance from the department in carrying out investigations when necessary;

(2) Establish a system at the local health department for maintaining confidentiality of written records and written and telephoned notifiable conditions case reports;

(3) Notify health care providers, laboratories, and health care facilities within the jurisdiction of the health department of requirements in this chapter;

(4) Notify the department of cases of any condition notifiable to the local health department (except animal bites) upon completion of the case investigation;

- (5) Distribute appropriate notification forms to persons responsible for reporting;
- (6) Notify the principal health care provider, if possible, prior to initiating a case investigation by the local health department.
- (7) Carry out the HIV partner notification requirements of WAC [246-100-072](#).
- (8) Allow laboratories to contact the health care provider ordering the diagnostic test before initiating patient contact if requested and the delay is unlikely to jeopardize public health;
- (9) Conduct investigations and institute control measures in accordance with chapter [246-100](#) WAC;
- (10) The local health department may adopt alternate arrangements for meeting the reporting requirements under this chapter through cooperative agreement between the local health department and any health care provider, laboratory or health care facility;
- (11) Each local health officer has the authority to:
  - (a) Carry out additional steps determined to be necessary to verify a diagnosis reported by a health care provider;
  - (b) Require any person suspected of having a reportable disease or condition to submit to examinations required to determine the presence of the disease or condition;
  - (c) Investigate any case or suspected case of a reportable disease or condition or other illness, communicable or otherwise, if deemed necessary;
  - (d) Require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer.

**WAC 246-101-515    *Handling of case reports and medical information.***

- (1) Local health officers or local health departments shall establish and maintain confidentiality procedures related to employee handling of all reports of cases and suspected cases, prohibiting disclosure of report information identifying an individual case or suspected cases except:
  - (a) To employees of the local health department, or other official agencies needing to know for the purpose of administering public health laws and these regulations;
  - (b) To health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control;
- (2) Local health officers shall require and maintain signed confidentiality agreements with all health department employees with access to identifying information related to a case or suspected case of a person diagnosed with a notifiable condition. The agreements will be renewed at least annually and will include reference to criminal and civil penalties for violation of chapters [70.02](#) and [70.24](#) RCW and other administrative actions that may be taken by the local health department.
- (3) Local health departments may release statistical summaries and epidemiological studies based on individual case reports if no individual is identified or identifiable.

**WAC 246-101-605    *Duties of the department.***

The department shall:

- (1) Provide consultation and technical assistance to local health departments and the department of labor and industries investigating notifiable conditions reports upon request.
- (2) Provide consultation and technical assistance to health care providers, laboratories, health care facilities, and others required to make notifications to public health authorities of notifiable conditions upon request.
- (3) Develop and distribute forms for the submission of notifiable conditions data to local health departments, health care providers, laboratories, health care facilities, and others required to make notifications to public health authorities of notifiable conditions.
- (4) Maintain a twenty-four hour department telephone number for reporting notifiable conditions.

(5) Develop routine data dissemination mechanisms that describe and analyze notifiable conditions case investigations and data. These may include annual and monthly reports and other mechanisms for data dissemination as developed by the department.

(6) Conduct investigations and institute control measures consistent with those indicated in the seventeenth edition, 2000 of *Control of Communicable Diseases Manual*, edited by James Chin, published by the American Public Health Association (copy is available for review at the department and at each local health department), except:

(a) When superseded by more up-to-date measures; or

(b) When other measures are more specifically related to Washington state.

(7) Document the known environmental, human, and or other variables associated with a case or suspected case of pesticide poisoning.

(8) Report the results of the pesticide investigation to the principal health care provider named in the case report form and to the local health officer in whose jurisdiction the exposure has occurred.

(9) The department may negotiate alternate arrangements for meeting reporting requirements under this chapter through cooperative agreement between the department and any health care provider, laboratory, or health care facility.

(10) The department may consolidate reporting for notifiable conditions from any health care provider, laboratory, or health care facility, and relieve that health care provider, laboratory, or health care facility from reporting directly to each local health department, if the department can provide the report to the local health department within the same time as the local health department would have otherwise received it.

**WAC 246-101-610    *Handling of case reports and medical information.***

(1) The state health officer or designee shall establish and maintain confidentiality procedures related to employee handling of all reports of cases and suspected cases, prohibiting disclosure of report information identifying an individual case or suspected cases except:

(a) To employees of the local health department, or other official agencies needing to know for the purpose of administering public health laws and these regulations.

(b) To health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control.

(2) The department shall require and maintain signed confidentiality agreements with all department employees, contractors, and others with access to identifying information related to a case or suspected case of a person diagnosed with a notifiable condition. These agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapters [70.02](#) and [70.24](#) RCW and other administrative actions that may be taken by the department.

**WAC 246-110-020    *Control of communicable (contagious) disease.***

(1) When there is an outbreak of a contagious disease, as defined in WAC [246-110-010](#), such that there is the potential for a case or cases within a school or day care center, the local health officer, if appropriate, after consultation with the secretary of health or designee shall take all medically appropriate actions deemed to be necessary to control or eliminate the spread of the disease, including, but not limited to:

(a) Closing the affected school(s) or day care center(s), or part(s) thereof;

(b) Closing other schools or day care centers in the local health officer's jurisdiction;

(c) Causing the cessation of selected school or day care center activities or functions;

(d) Excluding from schools or day care centers in the local health officer's jurisdiction any students, staff, and volunteers who are infected with, or deemed to be susceptible to, the disease.

(2) Prior to taking action the health officer shall:

(a) Consult with and discuss the ramifications of action with the superintendent of the school district, or the chief administrator of the day care center or their designees on the proposed action; and

(b) Provide the board of directors and the superintendent of the school district or the chief administrator of the day care

center a written decision in the form and substance of an order directing them to take action;

(3) Where these actions have been taken, the local health officer shall, in addition:

(a) Set the terms and conditions permitting schools or day care centers to reopen; activities and functions to resume; and excluded students, staff and volunteers to be readmitted; and

(b) Pursue, in consultation with the secretary of health or designee and school and/or day care officials, the investigation of the source of disease, or order those actions necessary to the ultimate control of the disease.

**WAC 246-170-002 Findings and purpose.**

(1) The board of health finds that:

(a) Pulmonary tuberculosis is a life-threatening airborne disease that can be casually transmitted without significant interaction with an infectious person. Tuberculosis has reemerged as an epidemic disease nationally, and though Washington state is not in an epidemic yet, the increasing number of cases in Washington state each year clearly demonstrate that absent timely and effective public health intervention in individual cases, the residents of the state of Washington are at risk of being infected by tuberculosis.

(b) In order to limit the spread of tuberculosis, it is essential that individuals who have the disease are diagnosed and treated before they infect others. Diagnosis requires a variety of methodologies including skin tests, x-rays, and laboratory analysis of sputum samples.

(c) A person with infectious tuberculosis who does not voluntarily submit to appropriate testing, treatment, or infection control methods poses an unreasonable risk of spreading the disease to those who come into the infectious person's proximity.

(d) Although the recommended course of treatment for tuberculosis varies somewhat from one individual to another, at a minimum, effective treatment requires a long-term regimen of multiple drug therapy. Some drugs are effective with some individuals but not others. The development of the appropriate course of treatment for any one individual may require trying different combinations of drugs and repeated drug susceptibility testing. The course of treatment may require as long as several years to complete.

(e) A person who begins a course of treatment for tuberculosis and fails to follow the recommended course through to completion is highly likely to relapse at some point into infectious tuberculosis. The person will most likely then be infected with what is known as multiple drug resistant tuberculosis, which is more virulent, more difficult to treat, and more likely to result in fatality. A person who is infectious with multiple drug resistant tuberculosis poses a significant risk of transmitting multiple drug resistant tuberculosis to other persons, unless appropriate treatment and infection control methods are followed.

(f) Multiple drug resistant tuberculosis is a significant element in the epidemic that is being encountered nation-wide, and effective public health interventions are necessary to prevent that epidemic from developing in or spreading to Washington state.

(2) The following rules are adopted for the purpose of establishing standards necessary to protect the public health by:

(a) Assuring the diagnosis, treatment, and prevention of tuberculosis; and

(b) Assuring that the highest priority is given to providing appropriate individualized preventive and curative treatment in the least restrictive setting.

**WAC 246-170-021 Responsibility of local health officers.**

Each county, city-county and district health officer is responsible for the control of tuberculosis within a jurisdiction. Each health officer shall act as or shall designate a physician to act as tuberculosis control officer. This individual shall coordinate all aspects of the prevention, treatment, and control program.

**WAC 246-170-031 Local health department responsibilities.**

(1) Each local health department shall assure the provision of a comprehensive program for the prevention, treatment, and control of tuberculosis. Services shall include:

(a) Prevention and screening, with emphasis on screening of high risk populations;

(b) Diagnosis and monitoring, including laboratory and radiology;

(c) Individualized treatment planning consistent with American Thoracic Society/Centers for Disease Control and Prevention statements based on the least restrictive measures necessary to assure appropriate treatment; and

(d) Case management.

(2) In the absence of third party reimbursement, the local health department shall assure the provision of inpatient or outpatient care, including DOT/DOPT and case management.

(3) Each local health department shall maintain a register of all diagnosed or suspected cases of tuberculosis. In addition, each local health department shall also maintain a register of individuals to whom that health department is providing preventive therapy. Quarterly status reports on suspected and diagnosed cases shall be furnished to the department of health tuberculosis control program.

(4) A physician knowledgeable in the diagnosis and treatment of tuberculosis approved by the department shall be available to provide review of diagnoses, plans of management and, if appropriate, discharge from inpatient facilities.

(5) Sufficient nursing, clerical, and other appropriate personnel shall be provided to furnish supervision of preventive and outpatient treatment, surveillance, suspect evaluation, epidemiologic investigation, and contact workup.

**WAC 246-170-051    *Procedures for involuntary testing, treatment, and detention.***

(1) A local health officer shall make reasonable efforts to obtain voluntary compliance with requests for examination, testing, and treatment prior to initiating the procedures for involuntary detention.

(2) If the local health officer has reason to believe that:

(a) A person is a suspected case, and that the person has failed to comply with a documented request from a health care practitioner or the local health officer to submit to examination and testing;

(b) A person with confirmed tuberculosis is failing to comply with an individual treatment plan approved by the local health officer;

(c) A person who is either a suspected or confirmed case and is failing to comply with infection control directives issued by the local health officer; or

(d) A person is a suspected or confirmed case of tuberculosis based upon generally accepted standards of medical and public health science. A local health officer shall investigate and evaluate the factual basis supporting his or her "reason to believe";

then the health officer may detain the person, cause the person to be detained by written order, or petition the superior court *ex parte* for an order to take the person into emergency detention for testing or treatment, or both. The period of detention shall not exceed seventy-two hours, excluding weekends and holidays.

(3) At the time of detention the person detained shall be given the following written notice:

NOTICE: You have the right to a superior court hearing within seventy-two hours of detention, excluding holidays and weekends. You have the right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

You have a right to contest the facts alleged against you, to cross-examine witnesses, and to present evidence and witnesses on your behalf.

You have a right to appeal any decision made by the court.

You may be given appropriate TB medications only on your informed consent, or pursuant to a court order.

(4) If a person is involuntarily detained under this section, within one judicial day of initial detention, the local health officer shall file with the superior court in the county of detention a petition for detention. A petition filed under this section shall specify:

(a) The basis for the local health officer's belief that the respondent is either a suspected or confirmed case; including the name, address and phone numbers of whom the health officer expects to testify in support of the petition for detention and identification of any and all medical tests and records relied upon by the local health officer;

(b) The specific actions taken by the local health officer to obtain voluntary compliance by the respondent with recommended examination and testing or treatment, as the case may be;

(c) The nature and duration of further detention or other court-ordered action that the local health officer believes is necessary in order to assure that the respondent is appropriately tested or treated;

(d) The basis for believing that further detention or other court-ordered action is necessary to protect the public health; and

(e) Other information the local health officer believes is pertinent to the proper resolution of the petition.

(5) Service on respondent. The health officer shall serve a copy of the petition on the individual named therein at the time of the detention. If the person informs the health officer that he or she is represented by legal counsel, service on such counsel shall be made by delivering a copy of the petition to the attorney's office no later than the time of filing the petition with the superior court.\*

**WAC 246-170-055 Due process proceedings.**

(1) A hearing on the petition for detention filed under WAC [246-170-051](#) shall be conducted in superior court within seventy-two hours after initial detention, excluding weekends and holidays. The local health officer shall have the burden of proving the allegations set forth in the petition by a preponderance of the evidence. The person named in the petition shall have the right to cross-examine witnesses, present evidence, and be represented by an attorney at any hearing held on the petition. If the person is indigent and requests appointment of legal counsel, legal counsel shall be appointed at public expense at least twenty-four hours prior to the superior court hearing.

(2) At the conclusion of the hearing, the court shall consider the evidence, the action taken by the health officer to secure voluntary compliance by the patient, and the purpose and intent of the public health laws, including this chapter, and may take one of the following actions:

(a) If the court finds that the respondent is a suspected case, the court may enter an order requiring that the person be subjected to further examination, testing, and treatment as specified in the court's order. If the court finds that further detention of the respondent is necessary in order to assure that the examination, testing, and treatment occurs, or to protect the public health the court may order that the respondent be detained for an additional period not to exceed forty-five days. The results of testing conducted under this chapter shall be provided to the court and the person detained or his or her legal counsel as soon as they are available to the local health officer. The court may then conduct an additional hearing to determine whether the person is a confirmed case and, if so, whether further measures are necessary to protect the public health pursuant to (b) or (c) of this subsection.

(b) If the court finds that the person is a confirmed case, that further measures less restrictive than detention of the respondent are necessary to assure that appropriate treatment is implemented and that imposition of less restrictive measures will be sufficient to protect the public health, the court may enter an order setting forth such measures and ordering the respondent to comply with the measures.

(c) If the court finds that the person is a confirmed case, that further detention of the respondent is necessary to protect the public health, and that imposition of less restrictive measures will not be sufficient to protect the public health, the court may order that the respondent be detained and treated for an additional period not to exceed forty-five days.

(d) If the court finds that there is insufficient evidence to support the petition for detention, then the court shall immediately release the person detained.

(3) A person detained under this chapter may be released prior to the expiration of the court-ordered detention if the health officer or the court finds that less restrictive measures are sufficient to protect the public health. The court may impose such conditions on the release of the person as the court finds are necessary to protect the public health. A person detained under this chapter may also petition the court for release based upon new evidence or a change in circumstances.

(4) The court may extend a period of court-ordered detention for additional periods not to exceed one hundred eighty days each following a hearing as described in WAC [246-170-051](#) and this section, if the court finds that the requirements of subsection (2)(a), (b), or (c) of this section have been met and if the court finds that further detention is necessary to assure that appropriate treatment is implemented, and that imposition of less restrictive measures are not sufficient to protect the public health. As an alternative to extending the period of detention, if the court finds after hearing that further measures less restrictive than detention are necessary to assure that appropriate treatment is continued, and that imposition of less restrictive measures will be sufficient to protect the public health, the court may enter an order setting forth the measures and ordering the respondent to comply.

(5) In the event that a person has been released from detention prior to completion of the prescribed course of treatment

and fails to comply with the prescribed course of treatment, the health officer where that individual is found may detain that person, and any court having jurisdiction of the person may order the person detained for an additional period or periods, not to exceed one hundred eighty days each, as the court finds necessary to protect the public health.

(6) If a person has been detained in a county other than the county in which the court that originally ordered the detention is located, venue of the proceedings may remain in the original county, or may be transferred to the county of detention. Change in venue may be sought either by the local health officer in the original county or in the county of detention, or by the person detained. Except as otherwise agreed between the original health officer and the health officer in the county of detention, the original health officer retains jurisdiction over the detained person, including financial responsibility for costs incurred in implementing and continuing the detention.

(7) Court orders entered under this chapter shall be entered only after a hearing at which the respondent is accorded the same rights as at the initial hearing on the petition for detention.

(8)(a) When a court order for detention is issued, the transporting law enforcement agency and the receiving facility shall be informed of the infectious TB status of the person for disease control and the protection of the health of the staff, other offenders and the public. Such information shall be made available prior to the transport.

(b) Whenever disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it except as authorized by state law."

(c) Transporting agencies and/or receiving facilities shall establish and implement policies and procedures that maintain confidentiality related to the detained person's medical information as defined in this subsection and state law.

**WAC 246-170-061     *Initiation of testing or treatment.***

If a person has been detained under WAC [246-170-051](#) or [246-170-055](#), the health officer may begin testing or treatment, with informed consent, or pursuant to a court order as appropriate, pending the hearing required under WAC [246-170-055](#).

**WAC 246-170-065     *Persons already detained, confined, or committed.***

(1) The provisions of WAC [246-170-051](#) through [246-170-061](#) do not apply to persons who have been lawfully detained, confined, or committed to the custody of a penal institution, a mental health facility, or another public or private institution. The person in charge of such facility or his or her designee shall report to the local health officer the names of persons in custody who are either a suspected or confirmed case. The report shall include information indicating the date upon which the person is to be released from the facility, if known, and if no specific release date has been determined, the earliest date upon which release is likely to occur. A person in custody may be ordered to undergo examination and testing or treatment, as appropriate, by the person in charge of the facility or designee, subject to such constitutional or other requirements as may be applicable.

(2) The person in charge of a custodial facility shall notify the local health officer and the department of the release of a person who is at the time of release reasonably believed to be either a suspected or confirmed case. The notice shall be given to the local health officer where the facility is located and to the local health officer having jurisdiction over the place to which the person is being released, if known. The notice shall be given as early as is practical, but in no event later than the time of the actual release.